

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

STATE OF IOWA, ex rel. THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA
[99AG25112],
and IOWA DEPARTMENT OF
TRANSPORTATION [99AG68645],

Plaintiffs,

v.

BRUCE RUBEN DUQUE, TINA R. DUQUE
(a/k/a Tina R. Heth), FRANCISCO J. DUQUE, JR.,
ESPERANZA DUQUE and JONATHAN WILLE,
individually and d/b/a AARDVARK AUTO
SERVICE & SALES, STATE STREET CAR
COMPANY, THE MOTORHAUS, AUTO KINGS,
UBA AUTO REPAIR and/or URA AUTO REPAIR
and THE CAR BOYS,

Defendants.

EQUITY NO. _____

PETITION

The State of Iowa ex rel. Attorney General Thomas J. Miller and the Iowa Department of Transportation file this Petition pursuant to the provisions of Iowa Code section 714.16, commonly known as the Iowa Consumer Fraud Act, Iowa Code chapter 322, commonly known as the Iowa Motor Vehicle Dealers Code, Iowa Code chapter 537, commonly known as the Iowa Consumer Credit Code and Iowa Code chapter 706A, commonly known as the Ongoing Criminal Conduct statute. In support of their claims, Plaintiffs state:

I. INTRODUCTION.

The Attorney General and the Iowa Department of Transportation bring this civil action regarding the acts and practices of the car dealerships and businesses located in the State of Iowa and known as Aardvark Auto Service & Sales, State Street Car

Company, The Motorhaus, Auto Kings, UBA Auto Repair and/or URA Auto Repair and The Car Boys, and their owners, high managerial personnel and agents concerning the advertising, sale and service of used cars and the extension of credit for the purchase of used cars, violations of the Iowa Consumer Fraud Act, the Iowa Motor Vehicle Dealers Code, and the Iowa Consumer Credit Code, and specified unlawful conduct in violation of the Ongoing Criminal Conduct statute.

Defendants target vulnerable consumers with poor or no credit histories by promising them reliable and safe transportation at low prices, with guaranteed financing, weekly payments and payoffs within a year. Instead of obtaining reliable and safe transportation and payoffs within a year as promised, Defendants' customers often find themselves making substantial payments to Defendants only to end up without a working car – either because the consumers could not afford the car in the first place or because the car has broken down or has been unlawfully repossessed by Defendants.

In sum, Defendants: (1) engage in a deliberately misleading advertising campaign to convince consumers that they can afford cars which they cannot afford by making claims including but not limited to "No Credit Check", "Everyone Approved", "0% Interest", "90 Day Warranty", "Most \$295-\$395 Down", "Most \$995 - \$2495 & \$50/Wk!", "Pay Off in Less Than a Year"; (2) deliberately mislead consumers as to the quality of the used cars they sell; (3) refuse to honor the warranties promised to the consumers and/or mislead consumers as to the quality of repairs Defendants make; (4) fail to timely transfer title to consumers who pay titling fees to the dealerships and/or file fraudulent applications for title on behalf of the consumers; (5) engage in a campaign to violate the Iowa Consumer Credit Code by failing to provide and/or timely provide any and all Truth in Lending disclosures

required by the Iowa Consumer Credit Code, further violating the Truth in Lending Act as incorporated by the Iowa Consumer Credit Code by failing to disclose all pertinent information in applicable advertisements, failing to include the document fee as part of the amount financed, charging more for credit purchases and failing to disclose the resulting finance charge, charging interest in excess of what is permitted by law, failing to provide proper Right to Cure notices to delinquent consumers, failing to file notification of engaging in the business of consumer credit with the Administrator of the Iowa Consumer Credit Code, failing to pay yearly fees to the Administrator of the Iowa Consumer Credit Code, failing to provide proper consumer credit notices, and failing to provide notice of consumer paper and engaging in harassing debt collection techniques designed to intimidate and embarrass consumers; (6) unlawfully repossess cars; and (7) engage in the business of selling at retail used motor vehicles or represent or advertise that Defendants are engaged in such business without a license. Ultimately, many consumers default on their predatory loans, resulting in many repossessions.

Through this predatory, fraudulent and unlawful system, Defendants have harmed Iowa consumers. The Attorney General and the Iowa Department of Transportation bring this action to stop Defendants' unlawful practices, to ensure that Defendants' ill-gotten gains are disgorged, to impose civil penalties and to secure such additional relief as the Court deems just and equitable.

II. PARTIES, JURISDICTION AND VENUE.

1. Thomas J. Miller is the duly elected Attorney General of the State of Iowa.
2. The Iowa Department of Transportation ("IADOT") is an agency of the State

of Iowa.

3. Bruce Ruben Duque is a resident of the State of Iowa and regularly transacts business in the State of Iowa. He is or was the *de facto* owner and/or manager of Aardvark Auto Service & Sales, State Street Car Company, The Motorhaus, and UBA Auto Repair and/or URA Auto Repair. He also owns, manages and/or operates an Illinois dealership known as The Car Boys. At all relevant times, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Aardvark Auto Service & Sales, State Street Car Company, The Motorhaus, UBA Auto Repair and/or URA Auto Repair, The Car Boys and other affiliated entities and/or enterprises.

4. Tina R. Duque (a/k/a Tina R. Heth) is a resident of the State of Iowa and regularly transacts business in the State of Iowa. She is the wife of Bruce R. Duque. She is or was the *de facto* owner and/or manager and/or a high managerial employee of Aardvark Auto Service & Sales, State Street Car Company, The Motorhaus and UBA Auto Repair and/or URA Auto Repair. She also owns, manages and/or operates an Illinois dealership known as The Car Boys. At all relevant times, acting alone or in concert with others, she has formulated, directed, controlled, or participated in the acts and practices of Aardvark Auto Service & Sales, State Street Car Company, The Motorhaus, UBA Auto Repair and/or URA Auto Repair, The Car Boys and other affiliated entities and/or enterprises.

5. Francisco J. Duque, Jr. is a resident of the State of Iowa and regularly transacts business in the State of Iowa. He is the father of Bruce R. Duque. Francisco Duque, Jr. was the holder of the Iowa motor vehicle dealer's licenses for Aardvark Auto Service & Sales, State Street Car Company and The Motorhaus. The licenses of Aardvark

Auto Service & Sales and The Motorhaus are currently revoked and the license of State Street Car Company was not renewed effective January 5, 2005. At all relevant times, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Aardvark Auto Service & Sales, State Street Car Company and The Motorhaus.

6. Esperanza Duque is a resident of the State of Iowa and regularly transacts business in the State of Iowa. She is the mother of Bruce R. Duque and the wife of Francisco Duque, Jr. Esperanza applied for an Iowa motor vehicle dealer's license for Auto Kings. She also holds an Illinois motor vehicle dealer's license for The Car Boys, the other auto dealership owned, managed and operated by Defendants Bruce Ruben Duque and Tina R. Duque.

7. Jonathan Wille is a resident of the State of Illinois and regularly transacts business in the State of Iowa. He is or was the *de facto* manager and/or a high managerial employee of Aardvark Auto Service & Sales, State Street Car Company, The Motorhaus, UBA Auto Repair and/or URA Auto Repair. At all relevant times, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Aardvark Auto Service & Sales, State Street Car Company, The Motorhaus, UBA Auto Repair and/or URA Auto Repair and other affiliated entities and/or enterprises.

8. The Attorney General of Iowa has authority to initiate an action for consumer fraud in violation of Iowa Code section 714.16. In addition, the Attorney General is the administrator of the Iowa Consumer Credit Code, pursuant to Iowa Code section 537.6103, and has the authority to initiate an action for violations of the Consumer Credit Code under section 537.6104. Additionally, the Attorney General has authority to bring civil actions to

enforce the Ongoing Criminal Conduct law, Iowa Code section 706A.3.

9. The Ongoing Criminal Conduct law, chapter 706A, allows both civil and criminal sanctions. Under the authority of section 706A.3, the Attorney General brings this civil action as *parens patriae* on behalf of the general economy, resources, and welfare of this State. Additionally, the Attorney General has been given authority as prosecutor to seek specific relief for the victims of the enterprise described herein.

10. IA DOT is the administrator of the Iowa Motor Vehicle Code pursuant to Iowa Code section 321.2, and has the authority to enforce its provisions pursuant to Iowa Code section 321.2, *et seq.* IADOT is also the administrator of the Iowa Motor Vehicle Dealers Code, pursuant to Iowa Code section 322.1, and has the authority to initiate an action for violations of the Motor Vehicle Dealers Code under Iowa Code section 322.1, *et seq.*

11. This lawsuit is the culmination of a substantial investigation by the Attorney General and IADOT including, but not limited to, numerous complaints regarding the Defendants that have been submitted to various governmental, law enforcement and other agencies.

12. Venue is proper in Scott County, Iowa because the Defendants have business locations in Scott County and otherwise conduct business in Scott County and one or more of the victims reside in Scott County. Iowa Code section 714.16(10). Venue is proper in Scott County for the Iowa Consumer Credit Code (hereinafter "ICCC") violations because the Defendants transact business in Scott County. Iowa Code section 537.6116. Venue is proper in Scott County for the Ongoing Criminal Conduct violation because the Defendants own property and transact enterprise business in Scott County.

III. BACKGROUND FACTS.

A. Aardvark Auto (D2967).

13. On October 26, 1998, Carlos Duque, the uncle of Defendant Bruce Duque and who is now deceased, submitted an Application for Dealers License to operate as Aardvark Auto at 802 W. 2nd Street, Davenport, Iowa. The license was issued on or about November 6, 1998 as D2967. Although the dealership license was issued to Carlos Duque, Defendant Bruce Duque was the *de facto* owner and manager of Aardvark Auto (D2967).

14. Aardvark Auto (D2967) concentrated on making credit car sales to consumers with low income and marginal and/or negative credit histories.

15. On September 21, 2000 the Iowa Attorney General's Office in its role as Administrator of the Iowa Consumer Credit Code sent Aardvark Auto (D2967) and Carlos Duque a letter detailing the numerous violations of the Iowa Consumer Credit Code including but not limited to Truth in Lending disclosure violations, late fee violations and Notice of Right to Cure violations. A true and correct copy of the September 21, 2000 letter is attached hereto as Exhibit A.

16. On November 14, 2000, Aardvark Auto (D2967) was cited by IADOT and was subsequently convicted of the following:

- a. Two counts of failure to have properly assigned title – Iowa Code section 321.104(4).
- b. Failure to obtain title – Iowa Code section 321.104(4).
- c. Failure to take dealer title – Iowa Code section 321.104.

- d. Failure to deliver title – Iowa Code section 321.104(4).
- e. Two counts of fraudulent application for title – Iowa Code section 321.97.

17. On November 13, 2001, the motor vehicle dealer's license of Aardvark Auto (D2967) was revoked by IADOT for a period of five years for seven counts of title violations. Two of the violations were considered fraudulent practices. As a result of the convictions, Carlos Duque could not hold an Iowa motor vehicle dealer's license for a period of five years pursuant to Iowa Code section 322.3(12).

B. Aardvark Auto (D3274).

18. Following the revocation of the Iowa motor vehicle dealer's license held by Carlos Duque, his brother Defendant Francisco Duque, Jr. applied for an Iowa motor vehicle dealer's license. On November 19, 2001, Defendant Francisco Duque, Jr. submitted an Application for Dealer's License to operate Aardvark Auto at 802 W. 2nd Street, Davenport, Iowa. The dealer's license was issued on or about November 20, 2001 as D3274. Again, although the dealer's license was issued to Defendant Francisco Duque, Jr., Defendants Bruce Duque and Tina Duque were the *de facto* owners and managers of Aardvark Auto (D3274).

19. Aardvark Auto (D3274) also concentrated on making consumer credit car sales to consumers with low income and marginal and/or negative credit histories. Through the enterprise alleged herein, Defendants have made hundreds of sales of used cars to Iowa consumers.

20. On August 2, 2005, Aardvark was cited by IADOT and subsequently

convicted of the following:

- a. Five counts of failure to have properly assigned title – Iowa Code section 321.104(1).
- b. One count of improper use of a registration-applied-for card – Iowa Code section 321.25.

21. Effective September 18, 2006, the motor vehicle dealer's license of Aardvark Auto (D3274) was revoked by IADOT for a period of 90 days. The revocation is presently the subject of a judicial review action in Scott County District Court, Case No. 107056. However, on September 20, 2006, the Court in that case denied Aardvark Auto's application for a stay of the revocation and the revocation became effective September 18, 2006. On September 20, 2006, IADOT picked up Aardvark Auto's dealer license (D3274) and all available dealer registration plates on-site from Defendant Bruce Duque at Aardvark Auto, 802 W. 2nd Street, Davenport, Iowa. See *Affidavit of Michael Athey*, attached hereto as Exhibit B and *Affidavit of Stacey Rockwell*, attached hereto as Exhibit C. At that time, Defendant Bruce Duque advised the IADOT investigators that he intended to re-open the dealership at the same location under a "new" name and "new" owners. Defendant Bruce Duque stated that his mother, Esperanza Duque, would be the owner on paper, but that she would not have any direct involvement with the new dealership. *Id.*

22. Because Defendant Francisco Duque, Jr. could not hold a motor vehicle dealer's license effective September 18, 2006, his wife Defendant Esperanza Duque applied for a motor vehicle dealer's license.

23. On September 26, 2006, Defendant Esperanza Duque submitted an Application for Dealer's License to operate Auto Kings at 802 W. 2nd Street, Davenport,

Iowa. The application was personally delivered to IADOT by Defendant Bruce Duque. See *Affidavit of Andrew P. Lewis*, attached hereto as Exhibit D. The license application fee was paid by Defendant Tina Duque d/b/a Cyclone Development located at 19491 258th Avenue, Bettendorf, Iowa – which is the personal residence of Defendants Bruce and Tina Duque. IADOT determined that this was actually an application by Aardvark Auto and/or its owners or representatives, whose license was revoked, and denied the application. See *Affidavit of Andrew P. Lewis*.

24. On or about December 14, 2006, Defendant Bruce Duque submitted an Application for Appointment as a Notary Public. On the application, Defendant Bruce Duque listed his business as UBA Auto Repair at 802 W. 2nd Street, Davenport, Iowa 52802. In addition, another employee of Aardvark Auto (D3274), Nicole Eskridge submitted an application for Appointment as a Notary Public. On the application, Nicole Eskridge also listed the business as UBA Auto Repair at 802 W. 2nd Street, Davenport, Iowa 52802. The application fees were paid with a check drawn on the personal checking account of Defendants Bruce and Tina Duque.

25. Subsequent thereto, Jon Wille, a high managerial employee of Aardvark Auto and The Motorhaus, applied for and was issued a license by the City of Davenport to operate a car repair business using the name UBA Auto Repair and/or URA Auto Repair at 802 W. 2nd Street, Davenport, Iowa.

26. On or about December 18, 2006, an employee of Aardvark Auto (D3274), Chavonnah Mathey, requested an on-site inspection by IADOT in order to submit an Application for Dealer's License in the name of Redfield Capitol Group, LLC d/b/a Red Baron at 802 W. 2nd Street, Davenport, Iowa 52802. The on-site inspection was conducted

by IADOT on December 18, 2006. On or about January 5, 2006, Angela Ortiz submitted an Application for Dealer's License to operate Red Baron at 802 W. 2nd Street, Davenport, Iowa. See *Second Affidavit of Andrew P. Lewis*, attached hereto as Exhibit E. Ms. Ortiz is married to Javier Ortiz, who is a business associate and/or former employee of Defendants. In addition, although Ms. Ortiz listed her address as 8222 Braids Bend Court, Charlotte, North Carolina, Ms. Ortiz and her husband Javier also own property located at 19483 258th Avenue, Bettendorf, Iowa – which is only a few houses away from the personal residence owned by Defendants Bruce and Tina Duque. The application fee(s) were paid with money orders purchased at a Hy-Vee in Davenport, Iowa.

C. State Street Car Company (D0282).

27. On December 31, 2003, Defendant Francisco Duque, Jr. had also submitted an Application for Dealer's License to operate State Street Car Company at 931 State Street, Bettendorf, Iowa. The dealer's license was issued on or about January 5, 2004 as D0282. Again, although the dealer's license was issued to Defendant Francisco Duque, Jr., Defendants Bruce Duque and Tina Duque were the *de facto* owners and managers of State Street Car Company (D0282).

28. State Street Car Company (D0282) also concentrated on making consumer credit sales to consumers with low income and marginal and/or negative credit histories. Through the enterprise alleged herein, Defendants have made hundreds of sales of used cars to Iowa consumers.

29. State Street Car Company did not renew its dealer's license after January 5, 2005 and ceased doing business at 931 State Street sometime prior to November 2005.

D. The Motorhaus (D1253).

30. On March 23, 2004, Defendant Francisco Duque, Jr. had also submitted an application for Dealer's License to operate The Motorhaus at 2905 Brady Street, Davenport, Iowa. The dealer's license was issued on March 23, 2004 as D1253. Again, although the dealer's license was issued to Defendant Francisco Duque, Jr., Defendants Bruce Duque, Tina Duque and Jon Wille were the *de facto* owners and/or managers of The Motorhaus (D1253).

31. The Motorhaus (D1253) also concentrated on making consumer credit car sales to consumers with low income and marginal and/or negative credit histories. Through the enterprise alleged herein, Defendants have made hundreds of consumer credit sales of used cars to Iowa consumers.

32. On August 2, 2005, The Motorhaus (D1253) was cited by IADOT and subsequently convicted of five counts of failure to have properly assigned title – Iowa Code section 321.104(1).

33. Effective May 30, 2006, the motor vehicle dealer's license of The Motorhaus (D1253) was revoked by IADOT for a period of 90 days. On May 31, 2006, IADOT picked up The Motorhaus' dealer license (D1253) and all available dealer plates on-site at 2905 Brady Street, Davenport, Iowa.

34. On June 27, 2006, Angela Ortiz submitted an Application for Dealer's License to continue to operate The Motorhaus at 2905 Brady Street, Davenport, Iowa. The application was signed by Amanda B. Liedtke, an employee of Aardvark Auto, as the agent of Angela Ortiz. Jonathan Wille, a managerial employee of Aardvark Auto and/or The Motorhaus, requested the on-site inspection by IADOT of 2905 Brady Street, Davenport,

Iowa in order to submit the Application for Dealer's License. The filing fee was paid by a cashier's check purchased from the Defendants' bank account. Further, Ms. Ortiz is married to Javier Ortiz, who is a business associate and/or former employee of Defendants. In addition, although Ms. Ortiz listed her address as 8222 Braids Bend Court, Charlotte, North Carolina, Ms. Ortiz and her husband Javier also own property located at 19483 258th Avenue, Bettendorf, Iowa – which is only a few houses away from the personal residence owned by Defendants Bruce and Tina Duque. IADOT determined that this was actually an application by The Motorhaus, whose license is revoked, and denied the application.

E. The Car Boys (IL D-3467).

35. Defendants have also established a used car lot doing business as The Car Boys at 5451 4th Avenue, Moline, Illinois. The Illinois dealer license (D-3467) was issued to Esperanza Duque, the wife of Defendant Francisco Duque, Jr. and the mother of Defendant Bruce Duque, on August 3, 2006. However, Esperanza does not actively participate in the business operation, presumably, in part, because she suffered a debilitating stroke nearly 10 years ago and because she has no employment history. Instead, Defendants Bruce Duque and Tina Duque are the *de facto* owners and managers of The Car Boys.

36. The Car Boys (IL D3467) also concentrates on making consumer credit car sales to consumers with low income and marginal and/or negative credit histories. Again, through the enterprise alleged herein, Defendants have made hundreds of sales of used cars to Iowa consumers.

IV. Facts Relating to Causes of Action.

A. Common Single Enterprise.

37. Notwithstanding the fact that separate motor vehicle dealer's licenses were issued for Aardvark Auto (D3274), State Street Car Company (D0282), The Motorhaus (D1253) and The Car Boys (IL D-3467), Defendants Bruce and Tina Duque and Jon Wille manage or have managed the business entities as a single enterprise. The various business entities share common bank account(s), share a common post office box, submit single wage reports to the State of Iowa Workforce Development, share common vendor accounts for the purchase of various products and services and commingle other resources, assets and funds.

38. Defendants conduct a high volume of business. In fact, the statements for one of Defendants' business bank accounts indicate that Defendants have made nearly \$900,000 of deposits during an 11-month period in 2006, with an average of approximately \$81,500 per month. In some instances, consumers simply endorse their paychecks in full directly to Defendants, which are then deposited into Defendants' accounts.

B. Facts Relating to Iowa Consumer Fraud Act Violations.

1. Deceptive Advertising.

39. Defendants extensively advertise to lure in consumers with little cash and poor or no credit histories. The thrust of Defendants' advertising campaigns is "No Credit Check", "Guaranteed Approval", "Warranty", "\$50 week" payments and "Pay Off in Less Than a Year."

40. The sign located at Aardvark Auto Service & Sales reads:

- a. "No Credit Check! Everyone Approved! 0% Interest! 90 Day Warranty! Most \$295-\$395 Down! Most \$995-2495 & \$50 Wk! Pay Off in Less Than a Year! We Fix Everyone's Car Cheap!"

41. Defendants' print advertisements also make the following claims:

- a. "No Job? No Problem! No Catch. No Credit Check, No Pay Stubs, No Phone Bills, No Kidding, Just Your Photo ID & Down Payment. Get a car TODAY in Half an Hour! ABSOLUTELY NO CREDIT CHECK!!! GUARANTEED financing in QCA! Money and Photo ID – ALL U NEED! FREE CAR* if we Don't Finance U! 0% Interest! 0%! 0%! 0%! 0%! Payments Start at \$40 WEEKLY! Pay Weekly, Bi-Weekly, Monthly! Low Prices Start at \$995 TOTAL! Most Pay Off in UNDER A YEAR! 1-Year Drive Train Warranty! Full Service Garage on Site! Refer friends for \$100 each! Check Our Website!"
- b. "Special!!! Free Car!! If we don't approve you! No Credit Check! 0% Interest! 0%! 1 Yr. Warranty! \$50 Per Week! We Service All! More Here! More Coming!"
- c. "We Don't Just Sell Cars . . . Our Loans Will Help You Build or Rebuild Your Credit. We offer a 90-Day Full Warranty, Low down Payments – low weekly, monthly or bi-monthly payments, Your Down payment and income are your approval."
- d. "Guaranteed Approval, No Credit Check, 0% Interest! 0%, 1 Yr. Warranty! \$50 Per Week! We Service All! More Here! More Coming!"

42. Defendants have also utilized advertisements on internet web pages making the following claims:

- a. "With the Buy-Here Pay-Here program you are approved. Pick Out Your Vehicle. Pay the Down Payment on your new vehicle. Payments are made at our office until the vehicle is paid off. It's That Simple."
- b. "At Aardvark Auto Sales, You Have Credit! We say YES when others say NO!"

43. Many of these advertisements contain false and deceptive statements and representations, including but not limited to the following:

- a. That most of Defendants' customers "pay off in under a year." In reality, many of Defendants' customers default, have their cars repossessed and do not pay off the cars;
- b. That Defendants provide a "90 Day Warranty" or "1 Yr. Warranty" on the cars they sell. In reality, requests for repairs under warranty are often ignored or refused.
- c. That Defendants "fix everyone's car cheap". In reality, when repair requests are honored, Defendants make inadequate repairs and offer to add the repair charges to the customer's finance arrangement which increases the likelihood of a consumer default;
- d. That Defendants' "loans will help you build or rebuild your credit." In reality, Defendants do not report to the three major credit reporting bureaus and therefore Defendants' loans have no impact or a negative impact on their customers' credit histories.

2. Condition of Vehicles.

44. Once lured onto the lot by Defendants' deceptive advertising, consumers are told that the cars are in good condition in order to induce the consumers to purchase the cars. Consumers often do not test drive the cars offered for sale prior to making a purchase decision.

45. Instead, the cars offered for sale are of poor quality and frequently break down after leaving the lot (or, in some instances, before leaving the lot).

46. Defendants have sold a significant number of cars which have either been previously damaged or salvaged.

3. Failure to Honor Warranty and/or Inadequate Repairs.

47. Defendants unfairly and deceptively use their warranty program to induce consumers to purchase cars from Defendants.

48. The consumers' requests to have repairs made under the warranty program

advertised are generally ignored or refused.

49. When a repair request is actually honored, the repairs performed are often inadequate to actually repair the car. Once the work is performed, Defendants charge for the inadequate repairs and refuse to return the cars to the consumers until the repair charges are paid. This procedure often results in the consumers abandoning the car(s) (and any payments that they have made toward the purchase of the car(s)) rather than paying for the inadequate repairs. The Defendants then return the car to Defendants' inventory for resale.

4. Unlawful Repossession.

50. Defendants regularly engage in the unlawful repossession of cars by: a) failing to provide consumers with a notice of their right to cure the default; b) repossessing the cars in advance of the expiration of the 20-day cure period; c) failing to provide consumers with a notice of their right to redeem following the repossession; and d) repossessing car(s) when consumers are not delinquent. In one such instance, a consumer's car was repossessed and when she called Aardvark Auto, she was advised that a mistake had been made. However, notwithstanding the mistake, Aardvark Auto refused to release the car until the consumer made an additional payment – which was not yet due. Aardvark Auto only released the car to the consumer after intervention by the Davenport Police Department and the car was returned to the consumer damaged and with personal property missing.

51. Defendants often repossess cars – without any notice to the consumer – while consumers are on the lot in order to make their weekly payment or to request repairs

to the car that they have purchased.

5. Conversion of Personal Property.

52. Following an unlawful repossession, Defendants routinely convert consumers' personal property by either refusing to return it to them without a payment for storage charges or by simply removing it from the car and claiming that the property was not in the car at the time of the repossession. In one such instance, Defendants refused to return a container holding the ashes of a consumer's deceased father.

6. Failure to Transfer Title.

53. Defendants delay or hinder the titling process by: a) issuing more than one 45-day registration applied for tags to the consumer in violation of Iowa Code sections 321.25 and 321.99; b) falsifying the dates of sale on the title application in violation of Iowa Code sections 321.97 and 321.99; and c) collecting title fees, taxes and license fees from the consumers and then, failing to apply for the title on behalf of the consumers in violation of Iowa Code sections 321.25 and 321.99. These tactics ease the process of returning cars to Defendants' inventory following a default and/or an unlawful repossession because often the car has not yet been titled to the consumer at the time that Defendants take repossession of the car.

54. Defendants' method of conducting business encourages consumers to default on their payments and increases the likelihood that the car will be repossessed by Defendants or otherwise returned to Defendants' inventory. Defendants do so by: a) knowingly providing credit to consumers who cannot afford the payments; b) failing to maintain or provide to consumers an adequate payment history or payoff quotes; c) making

repairs to cars and charging for repairs knowing that the consumers cannot afford to pay for the repairs; d) verbally agreeing to modify the payment schedule to induce consumers to make partial payments and then, declaring the consumer to be in default; and e) refusing to return the cars to the consumers once in the Defendants' possession for repair work.

55. These business practices result in Defendants often selling the same cars more than once.

7. Other Unlawful Conduct in Violation of Iowa Consumer Fraud Act.

56. Defendants provide consumers with a document entitled "Policies 2.0". This document purports to summarize the terms of the contract and the legal obligations of the consumers. In reality, this document is wholly inaccurate with respect to the law and misleads the consumers about their rights. The document makes the following incorrect, inaccurate and misleading claims, including but not limited to: a) Defendants can repossess the vehicle after the consumer is 10 days late; b) Defendants can charge as a late fee the greater of 5% of the payment or \$25; c) Defendants have the right to repair the vehicle without estimate or notice to the consumers; d) Defendants have the ability to have the consumer pay for any charges associated with enforcing the rights alleged in Policies 2.0; and e) Defendants have the ability to add extra costs to a consumer's loan.

57. In addition, Defendants frequently engage in threatening behavior in order to bully the consumers into making payments and/or refraining from attempting to exercise their rights under the warranty, the Iowa Consumer Fraud Act and the Iowa Consumer Credit Code. Defendants' threatening conduct includes the use of profanity, physical threats and calls to the local police when a consumer questions Defendants' conduct.

58. As more fully set forth herein, for the past several months, Defendants have fraudulently induced Iowa consumers to purchase cars from Defendants by holding themselves out to be licensed dealers. However, Defendants do not hold a valid motor vehicle dealer's license and are unauthorized to engage in the sale of used motor vehicles in the State of Iowa.

C. Facts Relating to Violations of Iowa Motor Vehicle Dealers Code.

59. IADOT investigators confirmed that on at least two separate occasions during the revocation period, Aardvark Auto's salesperson(s) represented that they were authorized to sell vehicles shown on the dealer's lot located at 802 W. 2nd Street, Davenport, Iowa.

- a. On October 17, 2006, Investigator Jeff Leyda of the Iowa Department of Transportation Motor Vehicle Enforcement Unit observed cars displayed on the lot located at 802 W. 2nd Street, Davenport, Iowa. He went into the office and inquired regarding a gold 1997 Chevrolet Malibu that had the price and payment plan displayed on the windshield. Nicole Eskridge accompanied Investigator Leyda outside and provided him with a business card for Bruce Duque of Aardvark Auto and wrote: "97 Chevy Malibu, \$595 down, \$3995 total sale price, \$60 a week for payment and that the vehicle had around 100,000 miles." She also told him that there was a warranty available for the car and it would cover major parts 50/50. She told him that the down payment was firm, but that the sale price was negotiable. See *Affidavit of Jeff Leyda*, attached hereto as Exhibit F.
- b. On November 8, 2006, Investigator Chris Leeman of the Iowa Department of Transportation Motor Vehicle Enforcement Unit observed cars displayed on the lot located at 802 W. 2nd Street, Davenport, Iowa. He inquired regarding a blue 1991 Pontiac Grand Prix two-door. Again, Nicole Eskridge and a man named Dave negotiated the price and payment options with Investigator Leeman. Ms. Eskridge provided a business card upon which she wrote her name and the contact information for Bob at Car Boys (764-7881) in Illinois. Ms. Eskridge advised Investigator Leeman that Car Boys was the actual owner of the cars located on the lot. On another business card, Ms. Eskridge wrote "0% interest, 1 Year Warrant, No Credit

Check, \$2,195 total, \$295 down, \$50 weekly payments and the approximate tax, title and license fees of \$155." Finally, Ms. Eskridge advised Investigator Leeman that he could pay less for the car if he paid cash outright instead of a payment plan. See *Affidavit of Christopher Leeman*, attached hereto as Exhibit G.

60. On October 18, 2006, Captain George R. O'Donnell of the Iowa Department of Transportation Motor Vehicle Enforcement Unit observed that Aardvark Auto was open for business at 802 W. 2nd Street, Davenport, Iowa and photographed some of the vehicles displayed for sale by the dealership. See *Affidavit of George O'Donnell*, attached hereto as Exhibit H.

61. Throughout the revocation period of Aardvark's license, Defendants continued to display and offer cars for sale at the lot located at 802 W. 2nd Street, Davenport, Iowa, continued to negotiate the terms of sales of the cars at the lot located at 802 W. 2nd Street, Davenport, Iowa, directed consumers to visit the Car Boys lot located in Moline, Illinois to complete the paperwork and/or completed the paperwork at the Davenport, Iowa location in Car Boys name, and then, continued to deliver the cars to consumers from the lot located at 802 W. 2nd Street, Davenport, Iowa.

62. During the revocation period of The Motorhaus' license, Defendants also continued to offer for sale and sell cars at the lot located at 2905 Brady Street, Davenport, Iowa.

63. Defendants continued to advertise with print ads cars for sale using The Motorhaus name at 2905 Brady Street, Davenport, Iowa through at least July 14, 2006. The advertising continued notwithstanding the fact that the Defendants did not have a valid motor vehicle dealer's license to operate using that name or to operate at that location after May 30, 2006.

64. On September 21, 2006, Defendants were continuing to advertise cars for sale at Aardvark Auto Service & Sales located at 802 W. 2nd Street, Davenport, Iowa. The advertising continued notwithstanding the fact that the motor vehicle dealer's license for Aardvark Auto Service & Sales had been revoked effective September 18, 2006.

65. In October 2006, Defendants began advertising with print ads cars for sale at Auto Kings located at 802 W. 2nd Street, Davenport, Iowa. The advertising continued notwithstanding the fact that the motor vehicle dealer's license for Aardvark Auto Service & Sales had been revoked effective September 18, 2006 and Auto Kings had not been issued a motor vehicle dealer's license.

66. In November 2006, Defendants began advertising with prints ads cars for sale using the Car Boys name, the Illinois dealership, at the Aardvark Auto address at 802 W. 2nd Street, Davenport, Iowa through December 2006. The advertising continued notwithstanding the fact that the Defendants did not have a valid motor vehicle dealer's license to operate at 802 W. 2nd Street, Davenport, Iowa or to operate a motor vehicle dealership at any location within the State of Iowa.

1. Violations of Iowa Motor Vehicles Code.

67. On or about October 16, 2004, Defendants (specifically Tina Duque) falsified the date of sale of a 1994 Jeep Cherokee, VIN 1J4FJ27SORL108439 on a First Re-assignment of Title of a Certificate of Title and on an Application for Certificate of Title and/or Registration for a vehicle. The purchase price for the vehicle was \$3,195.00 and Defendants' conduct, which was in violation of Iowa Code section 321.97, constituted a fraudulent practice in the Second Degree—a Class D felony.

68. On or about February 10, 2006, Defendants falsified the date of sale of a

1999 Pontiac Grand AM SE, VIN 1G2NE52T2XC515087 on an Assignment of Title of a Certificate of Title and on an Application for Certificate of Title and/or Registration for a vehicle. The purchase price for the vehicle was \$5,000.00 and Defendants' conduct, which was in violation of Iowa Code section 321.97, constituted a fraudulent practice in the Second Degree—a Class D felony.

D. Facts Relating to Violations of Iowa Consumer Credit Code.

69. At all relevant times, Defendants regularly extended or offered to extend credit for personal or household use for which a finance charge was imposed and/or the debt was payable in installments pursuant to a written agreement. Defendants sold automobiles to individuals for personal or household use for amounts under \$25,000 and in which a finance charge was imposed and/or the debt was payable in installments. Therefore, Defendants' car sales transactions are consumer credit transactions.

1. Unconscionability.

70. Iowa Code section 537.5108(1) provides that if a court finds as a matter of law the consumer credit transaction or agreement "to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement . . . "

71. An agreement or transaction can be found unconscionable by showing "[b]elief by the seller, lessor, or lender at the time a transaction is entered into that there is no reasonable probability of payment in full of the obligation by the consumer or debtor." Iowa Code section 537.5109(4)(a).

72. Defendants and their sales staff have deliberately sold used cars to

consumers where the Defendants and their staff knew that there was no reasonable probability of payment in full by the consumer. For example, Defendants advertise that they will sell cars to consumers who are unemployed and have limited or no source of income. Loans of this type are set up for failure and predatory in nature in that they ignore the consumer's inability to repay.

2. Failure to Provide or Timely Provide Truth in Lending Disclosures.

73. At all times relevant hereto, Defendants regularly failed to provide and/or timely provide the consumer with the standard truth in lending disclosures pursuant to Iowa Code section 537.3201. These disclosures provide the consumer with some basic information involving the extension of credit, including the amount of the finance charge, the amount financed, the total amount of payments, the amount and timing of payments, information concerning prepayment, proper information concerning late charges, and proper disclosure of the security. Defendants did not provide any and/or all of these necessary disclosures to the consumers during the course of the transactions.

3. Failure to Provide all Truth in Lending Disclosures in Advertisements.

74. At all times relevant hereto, Defendants regularly failed to provide in their applicable advertisements all requisite disclosures pursuant to Iowa Code section 537.3201. These disclosures provide the consumer a better and more complete understanding of the offer being advertised and prevent the type of misleading and incomplete advertisements promulgated by Defendants.

4. Failure to Disclose Finance Charges.

75. Defendants have routinely engaged in the practice of failing to disclose

finance charges.

76. When extending credit Defendants regularly charged a "document fee" of \$100.

77. A "document fee" is not a permissible additional authorized charge pursuant to Iowa Code section 537.2501.

78. If a charge in a consumer credit transaction is not an additional authorized charge, pursuant to Iowa Code section 537.2401, it must be considered part of the finance charge and properly disclosed as such.

79. Defendants claimed to customers that there was 0% APR, or in the words of the Iowa Consumer Credit Code, no finance charge despite the \$100 document fee that clearly is a finance charge. Other times, Defendants would claim a 27% finance charge, but not include the document fee in the finance charge, thereby violating disclosure and usury laws.

80. Defendants have routinely engaged in the practice of failing to disclose finance charges.

81. If a consumer wished to purchase a car on credit, Defendants increased the purchase price of the car. Even though Defendants inflated the purchase price of the car for consumers buying on credit thereby charging a fee for the extension of credit, they continued to claim a 0% APR, or a \$0.00 finance charge.

82. By increasing the sales price for credit purchases, Defendants were failing to accurately disclose the finance charge and in some cases imposing a finance charge in excess of the usury limit.

5. Failure to Provide Consumer Credit Notices to Consumer.

83. Defendants did not provide any writing evidencing a consumer credit transaction as mandated by Iowa Code section 537.3203. Such writings are supposed to inform a consumer of their need to read the paper, their right to a copy of the paper, and their right to prepay the loan. Defendants failed to detail in writing these rights to their consumers.

6. Failure to Provide Notice of Consumer Paper.

84. Defendants did not provide on any negotiable instrument involved in the transaction notice that the transaction was a consumer credit transaction as required by Iowa Code section 537.3211. Defendants deliberately shielded consumers from knowing the type of transaction in which they were engaging and thus from knowing all of the consumer's rights.

7. Failure to File Creditor Notification and Pay Fees.

85. As a creditor engaging in consumer credit transactions, Defendants had a duty to notify the Administrator of the Iowa Consumer Credit Code (hereinafter "Administrator") of their commencing and doing business in this State, in addition to providing other basic information such as addresses, registered agent, names of entities, etc. Defendants failed to provide any notification to the Administrator.

86. As a creditor engaging in consumer credit transactions, Defendants also had a duty to pay yearly fees to the Administrator. Defendants failed to pay any yearly fees to the Administrator.

8. Failure to Provide Notices of Right to Cure.

87. At all times relevant, Defendants have regularly failed to provide consumers with a Notice of Right to Cure prior to repossessing a consumer's vehicle.

88. Defendants' "Policies 2.0" even claims that the only thing necessary for Defendants to repossess is for consumers to be 10 days late with a payment.

89. Defendants have violated the Iowa Consumer Credit Code through failing to provide proper Notices of Rights to Cure.

9. Other Unlawful Conduct in Violation of Consumer Credit Code.

90. On or about October 29, 2005, consumer Mona Ford Bland and her husband Jay Bland purchased a motor vehicle from Aardvark. At this time, Mr. Bland signed and received a Motor Vehicle Purchase Agreement. The couple did not receive a Retail Installment Contract nor any other document disclosing the required Truth in Lending Disclosures. A \$100 document fee was listed on the Motor Vehicle Purchase Agreement. On or about November 3, 2005, Defendants provided Mr. and Mrs. Bland with a Retail Installment Contract, which disclosed an APR of 27%. The \$100 document fee was not included in the disclosed finance charge. Had it been included, the Bland's 27% APR would have been 29.29%, or 2.29% over the legal usury limit pursuant to Iowa Code section 322.19.

91. On or about November 3, 2006, Mona Ford Bland came into Aardvark to make her monthly payment. After she made her monthly payment, Defendants informed her that she was an entire payment behind and repossessed her car without a right to cure or even a minute's warning. A review of Ms. Bland's receipt history reveals that she had

missed a payment back in July 2006, however, she had continued to pay extra on her bi-weekly payments and had come within approximately \$10.00 of being caught up. Thus, she was not the entire \$120 behind that Defendants claimed when they took her car after she had already made a \$120 monthly payment. Moreover, on February 2, 2006, Ms. Bland had paid an extra \$100 that was billed as "title work". However, the titling fees were included in the purchase price of the car and had been disclosed as such on the original Motor Vehicle Purchase Agreement. Therefore Defendants could not charge Ms. Bland twice. Accordingly, the \$100 payment was an extra payment or an early payment and was not credited as such. If this payment had been properly accounted for instead of simply disappearing from the record, Ms. Bland was actually ahead on her payments. Defendants also improperly assessed Ms. Bland a late fee on June 12, 2006. When the extra \$100 payment and improper late fees are taken into account, Ms. Bland was ahead and not behind on her payments when her car was repossessed on November 3, 2006. As a result of the unlawful repossession Ms. Bland was without transportation and was forced to leave her personal belongings. Ms. Bland returned on November 6, 2006 and was forced to pay a \$15.00 storage fee for the personal belongings.

92. On or about May 6, 2006, consumer Katrina De-Ona Englund purchased a motor vehicle from Aardvark. At this time, she signed and received a Motor Vehicle Purchase Agreement. She did not receive a Retail Installment Contract or any other document disclosing the Truth in Lending Disclosures. A \$100 document fee was listed on the Motor Vehicle Purchase Agreement. On or about May 6, 2006, Defendants informed Ms. Englund that she was being charged 0% interest. On or about May 19, 2006, Defendants forged Ms. Englund's signature on a Motor Vehicle Purchase Agreement and

a Retail Installment Contract with Federal Truth in Lending disclosures. Both of these documents detailed the same transaction that occurred on May 6, 2006, but in addition to the forged signature and new disclosures, the seller is listed as Motorhaus and not Aardvark. On the forged Retail Installment Contract, the finance charge is disclosed as \$0.00 and the APR as 0%. If the \$100 document fee had been included, along with the extra \$17.00 Ms. Englund was to pay pursuant to the disclosed payment plan, Ms. Englund's interest rate would have incurred an interest rate above 0%.

E. Additional Facts Relating to Ongoing Criminal Conduct.

93. Defendant Bruce Duque is the *de facto* owner and manager of Aardvark Auto, State Street Car Company, The Motorhaus, UBA Auto Repair and/or URA Auto Repair and Car Boys.

94. Defendant Tina Duque is the *de facto* co-owner and co-manager of a Aardvark Auto, State Street Car Company, The Motorhaus, UBA Auto Repair and/or URA Auto Repair and Car Boys.

95. The activities of Defendants Bruce Duque, Tina Duque, Aardvark Auto, State Street Car Company, The Motorhaus, UBA Auto Repair and/or URA Auto Repair and Car Boys consist of one common enterprise.

96. Defendants Bruce and Tina Duque conduct the affairs of the enterprise and participate in the affairs of the enterprise. They are the high managerial agents of the respective entities.

97. Defendants Bruce Duque and Tina Duque forged and/or directed Defendants' employees to forge signatures on contracts and other documents.

98. The Defendants herein, acting as an enterprise, have engaged in specified

unlawful conduct in that, for financial gain on a continuing basis, the enterprise committed crimes punishable as indictable misdemeanors in the State of Iowa, as follows:

- a. Committing fraudulent practices in violation of sections 714.8(4) and 714.11 by making entries in the records of the business enterprise knowing the same to be false.
- b. Tampering with records in violation of section 715A.5 (aggravated misdemeanor) in that Defendants, knowing that they had no privilege to do so, tampered with records by falsifying writings or records with the intent to deceive or to conceal a wrongdoing;
- c. Committing forgery in violation of section 715A.2 or 715A.2A (aggravated misdemeanor);
- d. Willfully and knowingly misrepresenting the character, extent or amount of debt or the status of a debt to consumers in violation of sections 537.5113 and 537.7103(4)(e)(serious misdemeanor);
- e. Willfully and knowingly providing false or inaccurate information in violation of 537.5302 (serious misdemeanor), despite being told to cease such illegal conduct in the September 21, 2000 letter from the Iowa Attorney General's Office;
- f. Willfully and knowingly failing to provide and/or timely provide Truth in Lending disclosures in violation of 537.5302, despite being told to cease such illegal conduct in the September 21, 2000 letter from the Iowa Attorney General's Office.
- g. Willfully and knowingly failing to provide notification to the Administrator of the Iowa Consumer Credit Code of the commencement and doing business in this state as a creditor engaging in consumer credit transactions and failure to pay fees to the Administrator of the Iowa Consumer Credit Code in violation of Iowa Code Section 537.5301.

99. Defendants Bruce Duque and Tina Duque acted in concert with one another in furtherance of the above mentioned offenses.

F. Additional Allegations Relating to the Request for Injunctive Relief.

100. It is in the public interest that temporary and permanent injunctive relief be

issued herein to protect the people of the State of Iowa from any further fraudulent, dishonest, irresponsible, and unreliable conduct by Defendants in the future.

101. Neither all nor any part of this petition for injunctive relief has been previously presented to, or denied by, any other court or justice.

102. Pursuant to Iowa Rule of Civil Procedure 1.207, in an action by the state, no security shall be required of the State.

V. CERTIFICATION AND AFFIDAVIT.

103. In addition to the Consumer Fraud provisions cited above, Iowa R. Civ. P. 1.1501, *et seq.*, provide for entry of temporary injunctive relief. Iowa R. Civ. P. 1.1507 provides that a temporary injunction may issue **without notice** if the required showing is made, such showing to include a certification by the applicant's attorney as to certain matters. The undersigned certify as follows:

- a. Delaying injunctive relief by providing advance notice and hearing to Defendants is likely to result in: a) an extended period during which additional consumers are unlawfully induced to purchase cars from Defendants on the basis of the deceptive and fraudulent practices detailed herein and while Defendants do not have a motor vehicle dealer's license; and b) an increase in Defendants' unlawful repossession of cars from consumers who have already been subjected to Defendants' unlawful sales practices.
- b. Unless immediately enjoined, the deceptive, fraudulent and unlawful conduct will continue to harm Iowa consumers by inducing them to purchase cars that they would not purchase if the true material facts were disclosed to them by Defendants and by inducing them to purchase cars from an unlicensed motor vehicle dealer.
- c. The injunctive terms sought by Plaintiffs will not halt any legitimate, non-misleading business in which Defendants may be engaged. Defendants do not have a motor vehicle dealer's license and can not lawfully engage in the retail sale of used cars at this time.

- d. Defendants are individuals and businesses operated as sole proprietorships. Accordingly, the injunction requested is not such as to "stop the general and ordinary business of a corporation" for purposes of Iowa R. Civ. P. 1.1507.
- e. Given the history of law enforcement efforts directed at Defendants, as set forth herein, and Defendants' blatant disregard for those efforts, any doubt about halting the deceptive, fraudulent and unlawful conduct described herein should be resolved in favor of preventing further victimization.

104. The Affidavit of Consumer Protection Division Holly Merz in support of this Petition is attached hereto as Exhibit I.

VI. CAUSES OF ACTION.

A. COUNT ONE - CONSUMER FRAUD ACT

105. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 104 as if fully set forth herein.

106. Defendants' business transactions within the state of Iowa are in connection with the lease, sale or advertisement of merchandise.

107. Iowa Code section 714.16(2)(a) provides, in relevant part, that:

The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise . . . , whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

108. Defendants' business practices and advertising, as set forth herein, constitute deception as defined in Iowa Code section 714.16(1). Pursuant to that section, "[d]eception' means an act or practice which has the tendency or capacity to mislead a substantial number of consumers as to a material fact or facts."

109. Defendants' business practices and advertising, as set forth herein, constitute unfair practices as defined in Iowa Code section 714.16(1). Pursuant to that section, "unfair practice' means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces."

110. Defendants' business practices and advertising, as set forth herein, also constitute fraud, false pretense, false promises and misrepresentations and, therefore, were unlawful, pursuant to Iowa Code section 714.16(2)(a).

111. Iowa Code section 714.16(7) provides, in relevant part, that:

If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a **temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgment as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys or property, real or personal, which have been acquired by means of a practice declared to be unlawful by this section,** including the appointment of a receiver in cases of substantial and willful violation of this section. If a person has acquired moneys or property by any means declared to be unlawful by this section and if the costs of administering reimbursement outweighs the benefit to consumers or consumers to the reimbursement cannot be located through reasonable efforts, the court may order disgorgement of moneys or property acquired by the person by awarding the moneys or property to the state to be used by the attorney general for the administration and implementation of this section.

112. Iowa Code section 714.16(7) further provides that except in the case of a

material omission:

[I]t is not necessary in an action for reimbursement, or an injunction, **to allege or prove reliance, damages, intent to deceive, or that the person who engaged in an unlawful act had knowledge of the falsity of the claim or ignorance of the truth.** A claim for reimbursement may be provided by any competent evidence, including evidence that would be appropriate in a class action.

113. Iowa Code section 714.16(7) also provides that:

In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose **a civil penalty not to exceed forty thousand dollars per violation** against a person found to have engaged in a method, act, or practice declared unlawful under this section; provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person. In addition, on motion of the attorney general or its own motion, the court may impose a civil penalty of not more than five thousand dollars for each day of intentional violation of a temporary restraining order, preliminary injunction, or permanent injunction issued under authority of this section. A penalty imposed pursuant to this subsection is in addition to any penalty imposed pursuant to section 537.6113. Civil penalties ordered pursuant to this subsection shall be paid to the treasurer of state to be deposited in the general fund of the state.

114. Although it is not necessary to establish reliance, damages or intent to deceive to obtain injunctive relief or reimbursement under the Consumer Fraud Act, establishing these factors, particularly intent, is nevertheless relevant *inter alia* to the Court's determination of the appropriate scope of injunctive relief and the appropriate amount of civil penalties. Those acts and practices of Defendants in violation of subsection (2)(a) of the Consumer Fraud Act as alleged in this Count did in fact induce reliance on the part of the consumer victims, did in fact cause damage to consumers, and/or were in fact

intentional.

B. COUNT TWO- MOTOR VEHICLE DEALERS CODE

115. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 114 as if fully set forth herein.

116. During the period that the dealer licenses for Aardvark Auto (D3274) and The Motorhaus (D1253) were revoked, Defendants continued to engage in the business of selling at retail used motor vehicles in violation of Iowa Code section 322.3(2), which provides:

A person other than a licensed dealer in new motor vehicles **shall not** engage in this state in the business of selling at retail used motor vehicles or represent or advertise that the person is engaged or intends to engage in such business in this state unless and until the department has licensed the person as a used motor vehicle dealer in the state and has issued to the person a license in writing as provided in this chapter.

117. Defendants' actions constitute a pattern and practice of engaging in the business of settling motor vehicles at retail in violation of Iowa Code section 322.3(2).

118. Defendants have violated Iowa Code section 322.3(6) by providing retail installment contracts that do not reflect all essential provisions, including, but not limited to an accurate annual percentage rate and failing to comply with the Iowa Consumer Credit Code.

119. Defendants have violated Iowa Code section 322.19 by charging finance charges in excess of those permitted.

120. Defendants are continuing to violate the motor vehicle dealership laws and have every intention to continue to attempt to circumvent the motor vehicle dealership laws in the future by ignoring the revocation of the dealers' licenses and flagrantly engaging in

the business of selling motor vehicles during the revocation periods.

121. Iowa Code section 322.15 provides:

All provisions of this chapter shall be liberally construed to the end that **the practice or commission of fraud in the sale, barter, or disposition of motor vehicles at retail in this state may be prohibited and prevented, and irresponsible, unreliable, or dishonest persons may be prevented from engaging in the business of selling, bartering, or otherwise dealing in motor vehicles at retail in this state** and reliable persons may be encouraged to engage in the business of selling, bartering, and otherwise dealing in motor vehicles at retail in this state.

122. Iowa Code section 322.11 provides, in relevant part:

Whenever the department shall believe from evidence satisfactory to it that any person has or is now violating any provision of this chapter, the department may, in addition to any other remedy, bring an action in the name and on behalf of the state of Iowa against such person and any other person concerned in or in any way participating in or about to participate in practices or acts in violation of this chapter, **to enjoin such person and said other person from continuing the same.**

C. COUNT THREE - CONSUMER CREDIT CODE

123. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 122 as if fully set forth herein.

124. Count Three applies only to Bruce Ruben Duque, Tina R. Duque and Francisco J. Duque, Jr., individually and d/b/a Aardvark Auto Service & Sales and The Motorhaus.

125. At all relevant times hereto, the Defendants regularly extended or offered to extend consumer credit for personal and household use, in this case a car, pursuant to a written agreement for which either a finance charge was imposed or the debt was payable

in installments. The automobile purchase contracts signed by Defendants' customers are consumer credit transactions.

126. The Attorney General has sent a demand letter to Defendants Bruce Ruben Duque, Tina R. Duque and Francisco J. Duque, Jr., individually and d/b/a Aardvark Auto Service & Sales and The Motorhaus, as required by Iowa Code section 537.6113.

127. Defendants engaged in violations of the Iowa Consumer Credit Code by willfully and intentionally misrepresenting the character, extent or amount of the debt owing by consumers in violation of Iowa Code sections 537.7103(4)(d) and (e).

128. Defendants engaged in violations of the Iowa Consumer Credit Code by engaging in false, misleading and deceptive advertising in violation of Iowa Code section 537.3209(1).

129. Defendants have engaged in violations of the Iowa Consumer Credit Code by violating Iowa Code section 537.3201 which requires compliance with Truth in Lending disclosures in consumer credit transactions. In the course of these transactions, Defendants violated Truth in Lending disclosures by failing to disclose all of the following: (1) annual percentage rate; (2) amount financed; (3) finance charge; (4) the number, amount and timing of payments; (5) the total amount of all payments and the total sales price using required terminology pursuant to 15 U.S.C. §1638 and Regulation Z, 12 CFR § 226; (6) information concerning prepayment; (7) accurate information concerning late charges; and (8) the proper disclosure of the security on the transaction, all in violation of the Consumer Credit Code.

130. Defendants have further engaged in violations of Iowa Code section 537.3201 by failing to provide all truth in lending disclosures in their applicable

advertisements.

131. Defendants have engaged in violation of Iowa Code section 537.3201 by failing to accurately disclose all finance charges and attempting to hide the finance charge in the price of the vehicle.

132. Defendants have engaged in violation of Iowa Code section 537.2401 by charging finance charges in excess of those permitted by law.

133. Defendants have engaged in violations of the Iowa Consumer Credit Code by failing to file notification pursuant to Iowa Code section 537.6202 and failing to pay annual fees pursuant to Iowa Code section 537.6203.

134. Defendants have engaged in violations of the Iowa Consumer Credit Code by failing to provide notice to the consumer of a consumer credit transaction pursuant to Iowa Code section 537.3203.

135. Defendants have engaged in violations of the Iowa Consumer Credit Code by failing to provide notice of consumer paper pursuant to Iowa Code section 537.3211.

136. Defendants have engaged in violations of the Iowa Consumer Credit Code by failing to provide notices of right to cure prior to repossession, which violates Iowa Code sections 537.5110-537.5111.

137. Defendants have engaged in violations of the Iowa Consumer Credit Code by entering into unconscionable contracts in violation of Iowa Code section 537.5108 by the following means:

- a. Defendants knew that, at the time of sale, that there was no reasonable probability of payment in full of the obligation by the consumer; and
- b. Defendants knew that, at the time of sale, that the consumer would

not be able to receive substantial benefits from the property sold.

D. COUNT FOUR - ONGOING CRIMINAL CONDUCT

138. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 137 as if fully set forth herein.

139. Count Four applies only to Bruce Ruben Duque, Tina R. Duque and Francisco J. Duque, Jr., Esperanza Duque, individually and d/b/a Aardvark Auto Service & Sales and The Motorhaus.

140. Defendants Bruce Duque and Tina Duque engaged in violations of the Iowa Ongoing Criminal Conduct statute by acting as an enterprise, by engaging in specified unlawful conduct in that, for financial gain on a continuing basis the enterprise committed crimes punishable as indictable misdemeanors in the State of Iowa or did negligently allow property owned or controlled by the enterprise to be used to facilitate specified unlawful activity in violation of section 706A.3.

141. Defendants Francisco Duque, Jr. and Esperanza Duque have engaged in negligent empowerment of specified unlawful activity in violation of Iowa Code section 706A.2(5)(a), in that they negligently allowed property owned or controlled by them to be used to facilitate specified unlawful activity.

E. COUNT V - FAILURE TO RESPOND TO CIVIL INVESTIGATIVE DEMAND

142. Plaintiffs re-allege and incorporate by reference the allegations contained in Paragraphs 1 through 141 as if fully set forth herein.

143. Count Five applies only to Bruce Ruben Duque, Tina R. Duque and Francisco J. Duque, Jr., individually and d/b/a Aardvark Auto Service & Sales and The Motorhaus.

144. Iowa Code section 714.16(3) provides that when it appears to the attorney

general that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by this section or when the attorney general believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any such practice, the attorney general may

- a. Require such person to file on such forms as the attorney general may prescribe a statement or report in writing under oath or otherwise, as to all the facts and circumstances concerning the sale or advertisement of merchandise by such person, and such other data and information as the attorney general may deem necessary;
- b. Examine under oath any person in connection with the sale or advertisement of any merchandise;
- c. Examine any merchandise or sample thereof, record, book, document, account or paper as the attorney general deems necessary;

145. Iowa Code section 714.16(4)(a) provides authority for the Attorney General to subpoena individuals:

To accomplish the objectives and to carry out the duties prescribed in this section, the attorney general . . . may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry. . . .

146. The Attorney General has the authority to apply to the district court for the county in which the person resides or is located for relief upon a person's failure to provide the requested information. Iowa Code section 714.16(6)(a), (b) and (c) provide:

If any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general, the attorney general may, after notice, apply to . . . the district court in which the person resides or is located and, after hearing thereof, request an order:

a. Granting injunctive relief, restraining the sale or advertisement of any merchandise by such persons;

b. . . . revoking or suspending any other licenses, permits, or certificates issues pursuant to law to such person which are used to further the allegedly unlawful practice;

c. Granting such other relief as may be required; until the person files the statement or report, or obeys the subpoena.

147. Iowa Code section 537.6106 provides:

If the administrator has reasonable cause to believe that a person has engaged in conduct or committed an act which is in violation of this chapter, the administrator may make an investigation to determine whether the person has engaged in the conduct or committed the act, and, to the extent necessary for this purpose, may administer oaths or affirmations, and upon the administrator's own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence and require the production of, or testimony as to, any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

148. The Attorney General has the authority to apply to the district court for relief upon a person's failure to provide the requested information. Iowa Code section 537.6106(3) provides, "Upon application by the administrator showing failure without lawful excuse to obey a subpoena or give testimony and upon reasonable notice to all person affected thereby, the district court shall grant an order compelling compliance."

149. On July 21, 2006, the Attorney General served Civil Investigative Demands (hereinafter "CIDs") pursuant to Iowa Code sections 537.6106 and 714.16(3) on Aardvark Auto and The Motorhaus with a response deadline of August 21, 2006. The CIDs are attached hereto as Exhibit J.

150. In response, Bruce Duque, who identified himself as a principal of both Aardvark Auto and The Motorhaus, called counsel for the State requesting a 30-day extension to answer the CIDs. On July 27, 2006, Bruce Duque received a 30-day extension to answer the CIDs.

151. On or about September 11, 2006, attorney Jack Dusthimer faxed a letter to counsel for the State identifying himself as counsel for Aardvark Auto and The Motorhaus and claiming that it was impossible for Aardvark Auto and The Motorhaus to respond to the CIDs for fear of self-incrimination. The September 11, 2006 correspondence is attached hereto as Exhibit K.

152. On or about September 11, 2006, counsel for the State responded to counsel for Aardvark Auto and The Motorhaus noting that a company does not have a Fifth Amendment right against self-incrimination and requesting that counsel send citations for any law allowing a company a Fifth Amendment privilege. Counsel for the State further requested that if Aardvark Auto and The Motorhaus still wished to attempt to claim this privilege, they should send back a list of the questions for which they were going to claim privilege. The State's September 11, 2006 correspondence is attached hereto as Exhibit L.

153. On or about September 13, 2006, counsel for Aardvark Auto and The Motorhaus sent a letter again claiming privilege as to any individual who answered the CIDs on behalf of the companies. Counsel for Aardvark Auto and The Motorhaus failed to identify the specific questions for which individuals answering might be asserting a Fifth Amendment privilege. Aardvark's September 13, 2006 correspondence is attached hereto as Exhibit M.

154. On or about September 18, 2006, counsel for the State sent a letter to Aardvark again denying the existence of a company privilege, noting the fast-approaching due date and requesting that in the interest of cooperation, Aardvark Auto and The Motorhaus could at least provide a list of the CID questions for which a claim of self-incrimination would be made. Counsel for the State offered to discuss a new deadline for responding to the CID once the limited response was determined. The State's September 18, 2006 correspondence is attached hereto as Exhibit N.

155. On or about September 26, 2006, having not heard from counsel, counsel for the State called counsel for Aardvark Auto and The Motorhaus. Upon failure to make contact with counsel for Aardvark Auto and The Motorhaus, counsel for the State left a voicemail asking for a response to the September 18, 2006 correspondence and stating that if a response was not forthcoming counsel for the State may have to seek an application to enforce the State's CIDs.

156. Counsel for Aardvark Auto and The Motorhaus still has not responded to either the State's September 18, 2006 correspondence or the September 26, 2006 phone message.

157. On or about October 9, 2006, Bruce Duque left a voicemail message for counsel for the State stating that a response to the CIDs would be coming within the week. Counsel for the State did not return Mr. Duque's call as he is represented by counsel.

158. As of the filing of this Petition, no substantive response to the CIDs have been received.

VII. REQUESTED RELIEF.

Plaintiffs respectfully requests the Court to grant relief against Defendants as follows:

A. Relief for Consumer Fraud Act Violations – As to All Defendants.

1. That the Court, pursuant to Iowa Code section 714.16(7), temporarily and permanently enjoin Defendants and (as applicable) each of Defendants' directors, officers, principals, partners, employees, agents, representatives, subsidiaries, affiliates, successors, assigns, merged or acquired predecessors, parent or controlling entities, and all other persons, corporations, or other entities, acting in concert or participating with Defendants who have actual or constructive notice of the Court's injunction, from engaging in the deceptive, misleading and unfair practices alleged herein and from otherwise violating the Iowa Consumer Fraud Act.

2. That the Court expand the provisions of the temporary and permanent injunction as necessary by including the following "fencing in" provisions to ensure that the Defendants and the other enjoined persons and entities do not return to the unlawful practices alleged herein, or commit comparable violations of law, and prohibiting Defendants and the other enjoined persons and entities from:

- a. Engaging, personally or through a representative, in the sale at retail of used motor vehicles in the State of Iowa, as defined by Iowa Code section 322.2(7);
- b. Holding or applying, personally or through a representative, for any motor vehicle dealer's license or any other type of license, permit or

registration required for or associated with the retail sale, wholesale, purchase, lease, repair, rent, titling, financing, warranty, recycling, salvaging, repossession, transportation, hauling, carrying or towing of a motor vehicle in the State of Iowa;

- c. Attending any auto auction, personally or through any representative;
- d. Purchasing, personally or through any representative, any vehicles sold through or by an auto auction or auction representative;
- e. Purchasing or selling, personally or through any representative, motor vehicles, other than for personal use. "Personal use" means up to two vehicles per year, that are titled in one of the Defendants' name for at least 120 days, and that are used by one of the Defendants or the Defendants' immediate family for personal use.
- f. Acting in any capacity in the process of selling, buying, leasing, repairing, renting, titling, financing, warranting, recycling, salvaging, repossessing, wholesaling, transporting, hauling, carrying or towing used motor vehicles other than those that are used by Defendants for personal use, including but not limited to being employed as an agent, employee, contractor or consultant by any person or entity who is engaged in the business of selling, buying, leasing, repairing, renting, titling, financing, warranting, recycling, salvaging, repossessing, wholesaling, transporting, hauling, carrying or towing motor vehicles;
or
- g. Being engaged or employed, full-time or part-time, or in any capacity

by any person or entity who is engaged in the business of financing or otherwise extending credit to a person or entity who is engaged in the business of selling, buying, leasing, repairing, renting, titling, financing, warranting, recycling, salvaging, repossessing, wholesaling, transporting, hauling, carrying or towing motor vehicles.

3. That the Court, pursuant to Iowa Code section 714.16(7), enter judgment against Defendants, jointly and severally, for amounts necessary to restore to Iowa consumers all money acquired by means of acts or practices that violate the Iowa Consumer Fraud Act.

4. That the Court, pursuant to Iowa Code section 714.16(7), enter judgment against Defendants, jointly and severally, for such additional funds as are necessary to ensure complete disgorgement of all ill-gotten gain traceable to the unlawful practices alleged herein.

5. That the Court, pursuant to Iowa Code section 714.16(7), enter judgment against Defendants, jointly and severally, for up to \$40,000.00 for each separate violation of the Iowa Consumer Fraud Act.

6. That the Court award Plaintiffs interest as permitted by law.

7. That the Court, pursuant to Iowa Code section 714.16(11), enter judgment against Defendants, jointly and severally, for mandatory attorney fees and investigative and court costs.

8. That the Court grant such additional relief as the Court deems just and equitable in the premises.

B. Relief for Iowa Motor Vehicle Dealer's Code Violations – As to All Defendants.

9. That the Court, pursuant to Iowa Code section 322.11, temporarily and permanently enjoin Defendants from practices or acts in violation of Iowa Code Chapter 322.

10. That the Court temporarily and permanently enjoin Defendants Bruce R. Duque, Tina Duque, Francisco Duque, Jr. and Esperanza Duque from owning or operating a used motor vehicle dealership in the State of Iowa and/or conducting business as a used motor vehicle dealership under the names Aardvark Auto, State Street Car Company, The Motorhaus, UBA Auto Repair and/or URA Auto Repair, Auto Kings, The Car Boys, or any other names.

11. That the Court order Defendants to pay Plaintiff's costs, including but not limited to reasonable attorney fees and investigative and court costs incurred in this action.

12. That the Court grant any further relief that the Court deems just and equitable in the premises.

C. Relief for Iowa Consumer Credit Code Violations – As to Defendants Bruce Duque, Tina Duque, Francisco Duque, Jr., individually and d/b/a Aardvark Auto and The Motorhaus.

13. That the Court, pursuant to Iowa Code section 537.6110, enter an order that consumers with existing contracts with the Defendants may either have their contract reformed to conform to the terms of the Iowa Consumer Credit Code or to have the contract rescinded.

14. That the Court, pursuant to Iowa Code sections 537.6110 and 537.6111, enter an order permanently enjoining Defendants and (as applicable) each of Defendants'

of Defendants' directors, officers, principals, partners, employees, agents, representatives, subsidiaries, affiliates, successors, assigns, merged or acquired predecessors, parent or controlling entities, and all other persons, corporations, or other entities, acting in concert or participating with Defendants who have actual or constructive notice of the Court's injunction, from continuing to engage in the unlawful practices described in this Petition.

15. That the Court expand the provisions of the injunction as necessary by including such "fencing in" provisions as are reasonably necessary to ensure that the Defendants and other enjoined persons and entities do not return to the unlawful practices alleged herein, or commit comparable violations of law.

16. That the Court enter judgment against Defendants, jointly and severally, for monetary damages that the individual consumers could have a right to recover pursuant to section 537.6113(1).

17. That the Court, pursuant to Iowa Code section 537.6113(2), enter judgment against the Defendants, jointly and severally, for up to \$5,000.00 for each separate violation of the Iowa Consumer Credit Code.

18. That the Court, pursuant to Iowa Code section 537.6106(1), enter judgment against the Defendants, jointly and severally, for the reasonable costs of making the investigation.

19. That the Court grant such additional relief as the Court deems just and equitable in the premises.

D. Relief for Ongoing Criminal Conduct – As to Defendant Bruce Duque, Tina Duque, Francisco Duque, Jr. and Esperanza Duque.

20. That the Court, pursuant to Iowa Code section 706A.3(3), Ongoing Criminal

Conduct, order the following civil remedies:

- a. Order the Defendants to divest themselves of any interest in the enterprise or in any real or personal property owned by the enterprise, including but not limited to all motor vehicles.
- b. Impose reasonable restrictions upon the future activities or investments of Defendants, including but not limited to, prohibiting Defendants from engaging in the same type of endeavor as alleged herein.
- c. Order the dissolution or reorganization of the enterprise.
- d. Order the suspension or revocation of any license, permit, or prior approval granted to Defendants by any agency of the State of Iowa.
- e. Order the forfeiture of any property subject to forfeiture under chapter 809A.

21. That the Court, pursuant to Iowa Code section 706A.3(12), enter judgment against the Defendants, jointly and severally, for threefold the proceeds acquired, maintained, produced, or realized by or on behalf of the Defendants by reason of a violation of this chapter.

22. That the Court enter judgment against the Defendants, jointly and severally, for the costs and expenses of the investigation and prosecution of this action, including reasonable attorney fees.

E. Relief for Failure to Respond to CIDs – As to Defendants Bruce Duque, Tina Duque, Francisco Duque, Jr., individually and d/b/a Aardvark Auto and The Motorhaus.

23. That the Court grant permanent injunctive relief, restraining the sale or

advertisement of motor vehicles by Defendants.

24. That the Court revoke or suspend any licenses or certificates of authority issued to Defendants which have been or can be used to further the unlawful practices alleged herein.

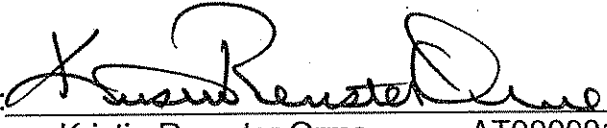
25. That the Court retain jurisdiction for purposes of enforcement of any orders or judgment entered herein.

26. That the Court grant such additional relief as the Court deems just and equitable in the premises.

Respectfully submitted,


THOMAS J. MILLER
Attorney General of Iowa

WILLIAM L. BRAUCH
Special Assistant Attorney General of Iowa
Director - Consumer Protection Division

By: 
Kristie Remster Orme AT0009014
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jdvorak@ag.state.ia.us

and

MARK SCHOUTEN
Special Assistant Attorney General of Iowa
General Counsel - Iowa Department of
Transportation

By: 
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ATTORNEYS FOR PLAINTIFFS

THOMAS J. MILLER
ATTORNEY GENERAL



Department of Justice

CONSUMER PROTECTION DIVISION
HOOVER BUILDING
DES MOINES, IOWA 50319
TELEPHONE: 515-281-5926
TELEFAX: 515-281-6771

September 21, 2000

Carlos F. Duque
Aardvark Auto
802 W.2d Street
Davenport, IA 52802

RE: Auto Finance Agreements/
Notice of Non-compliance with Iowa Code and Federal Law

Dear Mr. Duque:

Our office acts as the Administrator of the Iowa Consumer Credit Code, Iowa Code Chapter 537, and the Truth in Lending Act. Iowa Code § 537.6103. Our office also enforces the Consumer Fraud Act, Iowa Code § 714.16.

This is to notify you that we have received two complaints which included copies of your purchase agreement and the financing documents. These documents are seriously out of compliance with state and federal law. The violations include, but may not be limited to:

Truth in Lending disclosure violations

15 U.S.C. § 1638; and Regulation Z, 12 C.F.R. § 226, especially § 226.18.

- failure to segregate required information
- failure to provide required disclosures clearly and conspicuously
- failure to disclose the finance charge and annual percentage rate¹
 - accurately
 - more clearly and conspicuously than other disclosures
 - using required terminology

¹ The "loan fee" is a finance charge, under both state and federal law. Iowa Code § 537.1301(19); 15 U.S.C. § 1605, and must be disclosed as such. Since it is a finance charge, these installment contracts are not "0%" contracts. Also, please be certain that other charges are properly included in the amount financed, rather than constituting finance charges.

failure to disclose the amount financed
failure to properly, clearly and conspicuously disclose the number, amount and timing of payments
failure to disclose the total of payments and total sale price, using required form and terminology
failure to disclose information concerning prepayment
failure to disclose information concerning late charges which accurately reflect the consumer's legal obligation
failure to properly disclose the security on the transaction

Violations of Iowa Code § 322.3(6)

retail installment contract does not reflect all essential provisions, including, but not limited to a failure to disclose accurately the annual percentage rate on the transaction and does not comply with the Iowa Consumer Credit Code

Violations of the ICCC, Iowa Code Chap. 537

all disclosure violations of the Truth in Lending Act constitute violations of the Iowa Consumer Credit Code, Iowa Code § 537.3201;
provisions in the "buyer agreement to pay" regarding late fees are illegal, Iowa Code § 537.2502
late fees cannot be imposed prior to 10 days after due date
only one late fee can be imposed per late payment, irrespective of the length of time it remains in default; and late fees cannot be pyramided;
the "buyer agreement to pay" purports to make a 7-day delinquency a default requiring immediate return in violation of §§ 537.2502, 537.5109 - 537.5111
the "buyer agreement to pay" purports to make a failure to inform seller of change in address, phone, employment a default entitling "impound immediately," in violation of §§ 537.5109-537.5111
the "buyer agreement to pay" purports to require the consumer to surrender upon failure to comply with conditions which are not conditions which can constitute default under Iowa law; § 537.5109
provisions requiring payment of attorneys fees are prohibited and unenforceable, Iowa Code § 537.2507, and default-related charges are strictly limited, Iowa Code § 537.3402
rebates of unearned interest are required upon prepayment, including acceleration; Iowa Code § 537.2510 (see note 1)
notices of right to cure must be given prior to repossession, Iowa Code §§ 537.5110-537.5111, and repossessions must be conducted in accordance with Iowa Code Chap. 554, Part 9.

Further, if you act upon some of the clauses in your buyer's agreement in the course of collection or repossession efforts, you are likely to also violate Iowa Code § 537.7103.

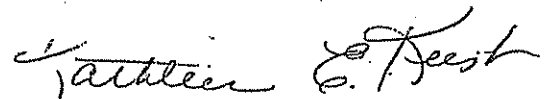
Please note that, in addition to remedies available to the Administrator, your customers also have private rights of action against you for these violations under Iowa Code § 537.5201

and 15 U.S.C. § 1640. Remedies available to the consumers include actual and statutory damages plus liability for their attorneys fees and court costs.

You should

- * seek the advice of a lawyer conversant with laws regarding motor vehicle installment sales and auto financing, and conform your operations to the requirements of applicable laws;
- * immediately cease using contracts with illegal terms;
- * immediately cease completing contracts in a manner that does not comply with state and federal law;
- * cease trying to enforce under existing contracts illegal contract terms, collecting illegal charges, or engaging in repossession without complying with Iowa Code Chapters 537 and 554.

Sincerely,



Kathleen E. Keest
Assistant Attorney General
Deputy Administrator,
Iowa Consumer Credit Code

cc:

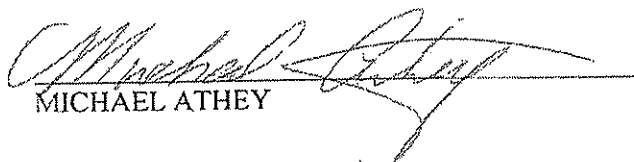
Michael Sims
Iowa Department of Transportation
3125 W. 65th Street
Davenport, IA 52806

**AFFIDAVIT OF
MICHAEL ATHEY**

I. Michael Athey, being first duly sworn, attest to the following:

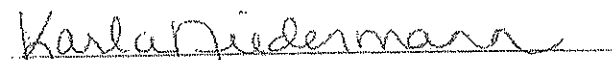
1. I am an investigator employed by the Iowa Department of Transportation in the Motor Vehicle Enforcement/Investigative Unit.

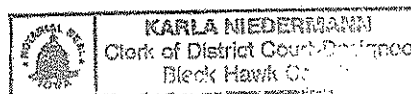
2. On September 20, 2006, Investigator Stacey Rockwell and I picked up the available dealer registration plates and dealer license from Bruce Duque at Aardvark Auto, 802 W. 2nd St., Davenport, IA. Bruce Duque stated that it is his intention to re-open a dealership at the same location under a "new" name and "new" owner. Bruce Duque told me and Investigator Rockwell that his mother, Esperanza Duque, will be the owner on paper, although she will not have any direct involvement with the new dealership called Auto Kings.


MICHAEL ATHEY

STATE OF IOWA, Black Hawk COUNTY, SS:

Subscribed and sworn to before me, a notary public in and for the State of Iowa, this 1st
day of December, 2006.


Notary Public, State of Iowa
My commission expires: non expires



**PLAINTIFF'S
EXHIBIT**

B

PR1215 112-0213

**AFFIDAVIT OF
STACEY ROCKWELL**

I, Stacey Rockwell, being first duly sworn, attest to the following:


1. I am an investigator employed by the Iowa Department of Transportation in the Motor Vehicle Enforcement/Investigative Unit.

2. On September 20, 2006, Investigator Mike Athey and I visited Aardvark Auto at 802 West Second Street, Davenport, IA to pick up the dealer registration plates and dealer license from Bruce Duque. Bruce Duque stated that it is his intent to re-open the dealership at the same location under a "new" name (Auto Kings) and "new" owner (Esperanza Duque). Bruce Duque stated that his mother, Esperanza Duque, will be the owner on paper, but that she will not have any direct involvement with the new dealership.


STACEY ROCKWELL

STATE OF IOWA, LINN COUNTY, SS:

Subscribed and sworn to before me, a notary public in and for the State of Iowa, this 4
day of December, 2006.


Notary Public, State of Iowa
My commission expires: 8-28-09

**PLAINTIFF'S
EXHIBIT**

C

PR1215 11-2-023

**AFFIDAVIT OF
ANDREW P. LEWIS**

I, Andrew P. Lewis, being first duly sworn, attest to the following:

1. I am employed by the Iowa Department of Transportation as assistant office director in the Motor Vehicle Division, Office of Vehicle Services.
2. On September 26, 2006, Bruce Duque personally delivered to the Office of Vehicle Services an application for dealer's license in the name of Auto Kings. The address for this proposed dealership (802 West Second Street, Davenport, IA 52802) is the same as for Aardvark Auto, whose dealer license (D3274) is revoked for 90 days effective September 18, 2006. Bruce Duque was the dealership's sole representative at the administrative license revocation hearing.
3. The owner listed on the application for Auto Kings is Esperanza Duque. Her personal address and phone number are listed as 1147 Fenno Drive, Bettendorf, IA; 563-355-8230. This address and phone number are the same as those of her husband, Francisco Duque, who is listed as owner of Aardvark Auto at 802 West Second Street, Davenport, IA.
4. The DOT has determined that Esperanza and Francisco Duque's son, Bruce R. Duque, actually operates and controls Aardvark Auto, and will serve in the same capacity for the proposed Auto Kings dealership.
5. Bruce Duque also operated and controlled Francisco Duque's second dealership, The Motorhaus, located at 2905 North Brady St., Davenport, Iowa, until its license was revoked for 90 days on May 30, 2006. Bruce Duque also represented this dealership at the administrative license revocation hearing.
6. Bruce Duque also operated and controlled the first Aardvark Auto located at 802 West Second Street, Davenport, Iowa, when it was owned by his uncle, Carlos Duque, until its dealership license was revoked for five years in October of 2001. Bruce Duque represented the dealership at the administrative license revocation hearing as well.
5. Based upon these facts, the DOT determined that the managers/owners of Aardvark Auto are attempting to circumvent the revocation of that dealer's license by applying for a license in a new dealer name, Auto Kings.

**PLAINTIFF'S
EXHIBIT**

D.

PR1245 112-0013

6. By letter dated October 9, 2006, the DOT informed Esperanza Duque that her application for a dealer's license had been reviewed and denied because it constituted an application for a license by Aardvark Auto. She was informed that the dealer license for Aardvark Auto was revoked effective September 18, 2006, for a period of 90 days, and that Aardvark Auto may reapply for a license after the revocation period has expired. The letter advised that Iowa Code section 322.6 provides the DOT may deny the application for any person for a license as a motor vehicle dealer and refuse to issue a license to the person if the applicant has made a material false statement in their application.

Andrew P. Lewis
ANDREW P. LEWIS

STATE OF IOWA, Polk COUNTY, SS:

Subscribed and sworn to before me, a notary public in and for the State of Iowa, this 6th
day of December, 2006.

Salonne A. Short
Notary Public, State of Iowa
My commission expires: 9/26/08

SECOND AFFIDAVIT OF ANDREW P. LEWIS

I, Andrew P. Lewis, being first duly sworn, attest to the following:

1. I am employed by the Iowa Department of Transportation as Assistant Office Director in the Motor Vehicle Division, Office of Vehicle Services.
2. On December 18, 2006, an employee of Aardvark Auto (D3274), Chavonnah Mathey, requested an on-site inspection by IADOT in order to submit an Application for Dealer's License in the name of Redfield Capitol Group, LLC d/b/a Red Baron at 802 W. 2nd Street, Davenport, Iowa 52802.
3. The on-site inspection was conducted by IADOT on December 18, 2006.
4. On or about January 5, 2006, Angela Ortiz submitted an Application for Dealer's License to operate Red Baron at 802 W. 2nd Street, Davenport, Iowa.
5. Ms. Ortiz is married to Javier Ortiz, who is a business associate and/or former employee of Defendants. In addition, although Ms. Ortiz listed her address as 8222 Braids Bend Court, Charlotte, North Carolina, Ms. Ortiz and her husband Javier also own property located at 19483 258th Avenue, Bettendorf, Iowa – which is only a few houses away from the personal residence owned by Defendants Bruce and Tina Duque.
6. The application fee(s) were paid with money orders purchased at a Hy-Vee in Davenport, Iowa.

Andrew P. Lewis

Andrew P. Lewis

STATE OF IOWA, POLK COUNTY, SS:

18th day of January, 2007. Subscribed and sworn to before me, a notary public in and for the State of Iowa, this

Lavonne A. Short
Notary Public, State of Iowa
My Commission Expires: 9/26/08



PLAINTIFF'S
EXHIBIT

E

**AFFIDAVIT OF
JEFFRY LEYDA**

I, Jeffry Leyda, being first duly sworn, attest to the following:

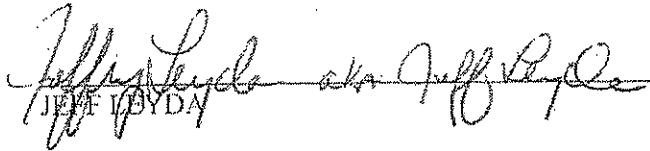
1. I am an investigator employed by the Iowa Department of Transportation in the Motor Vehicle Enforcement/Investigative Unit.

2. On October 17, 2006, at approximately 11:50 a.m., I visited Aardvark Auto at 802 West Second Street, Davenport, Iowa, inquiring about the purchase of a used automobile. After several minutes at the dealership lot, I went into the office and inquired about a gold 1997 Chevrolet Malibu that had the price and payment plan on the windshield.

3. Inside the office I met a young woman named Nicki. I asked about the Malibu on the lot. Nicki said she could show it to me. I asked her if she could write down the price and approximate mileage. She said she hadn't worked there very long and didn't have her own business card. She did produce a business card showing the name Aardvard Auto.com and the name Bruce Duque.

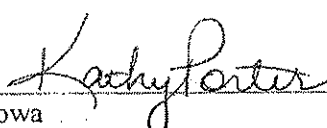
4. Once outside at the vehicle, she wrote down the following information: 97 Chevy Malibu, \$595 down, \$3995 total sale price, \$60 a week for payment and that the vehicle had around 100,000 miles. Nicki also stated that there was a warranty available for the car and it would cover major parts 50/50. She stated it did not cover tires or brakes but would cover motor and transmission. Nicki said the down payment was firm, but the sale price was negotiable.

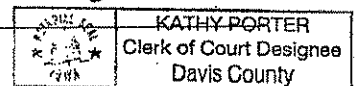
5. Attached are two photographs of the 1997 Chevrolet Malibu displayed for sale at Aardvark Auto on October 17, 2006.


JEFF LEYDA

STATE OF IOWA, Davis COUNTY, SS:

Subscribed and sworn to before me, a notary public in and for the State of Iowa, this 1st
day of December, 2006.


Notary Public, State of Iowa
My commission expires: _____



**PLAINTIFF'S
EXHIBIT**


F

PR215 112-0213

**AFFIDAVIT OF
CHRISTOPHER LEEMAN**

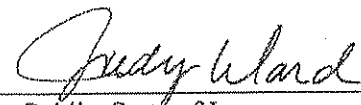
I, Christopher Leeman, being first duly sworn, attest to the following:

1. I am an investigator employed by the Iowa Department of Transportation, Motor Vehicle Enforcement/Investigative Unit.
2. On November 8, 2006, at approximately 10:00 a.m., I visited Aardvark Auto at 802 W.2nd St. in Davenport, Iowa, posing as a customer interested in purchasing a motor vehicle. The vehicle selected was a blue 1991 Pontiac Grand Prix two-door located in the corner of the lot. I spoke with the lot attendant (Dave) and later with the female (Nikki) in the office in charge of sales and negotiations. The intent was to gather information and verification that the business at the location was still engaging in the sale of motor vehicles without a valid license.
3. In the 35-40 minutes at Aardvark Auto, I negotiated the price and payment options with Nikki. She provided me with a business card upon which she wrote her name and contact information for Bob at Car Boys (764-7881) in Illinois.. She advised that Car Boys was the actual owner of the vehicles located on the Aardvark Auto lot and being offered for sale. Dave indicated several other vehicles that I, as a customer, might wish to purchase. Nikki provided me another business card on which she wrote the following notations: 0% interest, 1 Year Warrant, No Credit Check, \$2,195 total, \$295 down, \$50 weekly payments and the approximate tax, title and license fees of \$155. Nikki quoted the ability to pay less if I paid cash outright, as opposed to a payment plan purchase price.


CHRIS LEEMAN

STATE OF IOWA, LINN COUNTY, SS:

Subscribed and sworn to before me, a notary public in and for the State of Iowa, this 4
day of December, 2006.


Notary Public, State of Iowa
My commission expires: 8-28-09

**PLAINTIFF'S
EXHIBIT
G**

PRI215 11-2-0213

**AFFIDAVIT OF
GEORGE R. O'DONNELL**

I, George R. O'Donnell, being first duly sworn, attest to the following:

1. I am employed by the Iowa Department of Transportation as a captain in the Motor Vehicle Enforcement/Investigative Unit.

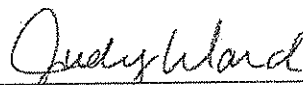
2. On October 18, 2006, I took the attached four photographs at Aardvark Auto. They include photos of a Plymouth van displaying a Registration Applied For card parked alongside the Aardvark Auto property. The photos also show the inventory parked at Aardvark Auto. My observations were that the dealership was open for business on that particular day.



GEORGE R. O'DONNELL

STATE OF IOWA, LINN COUNTY, SS:

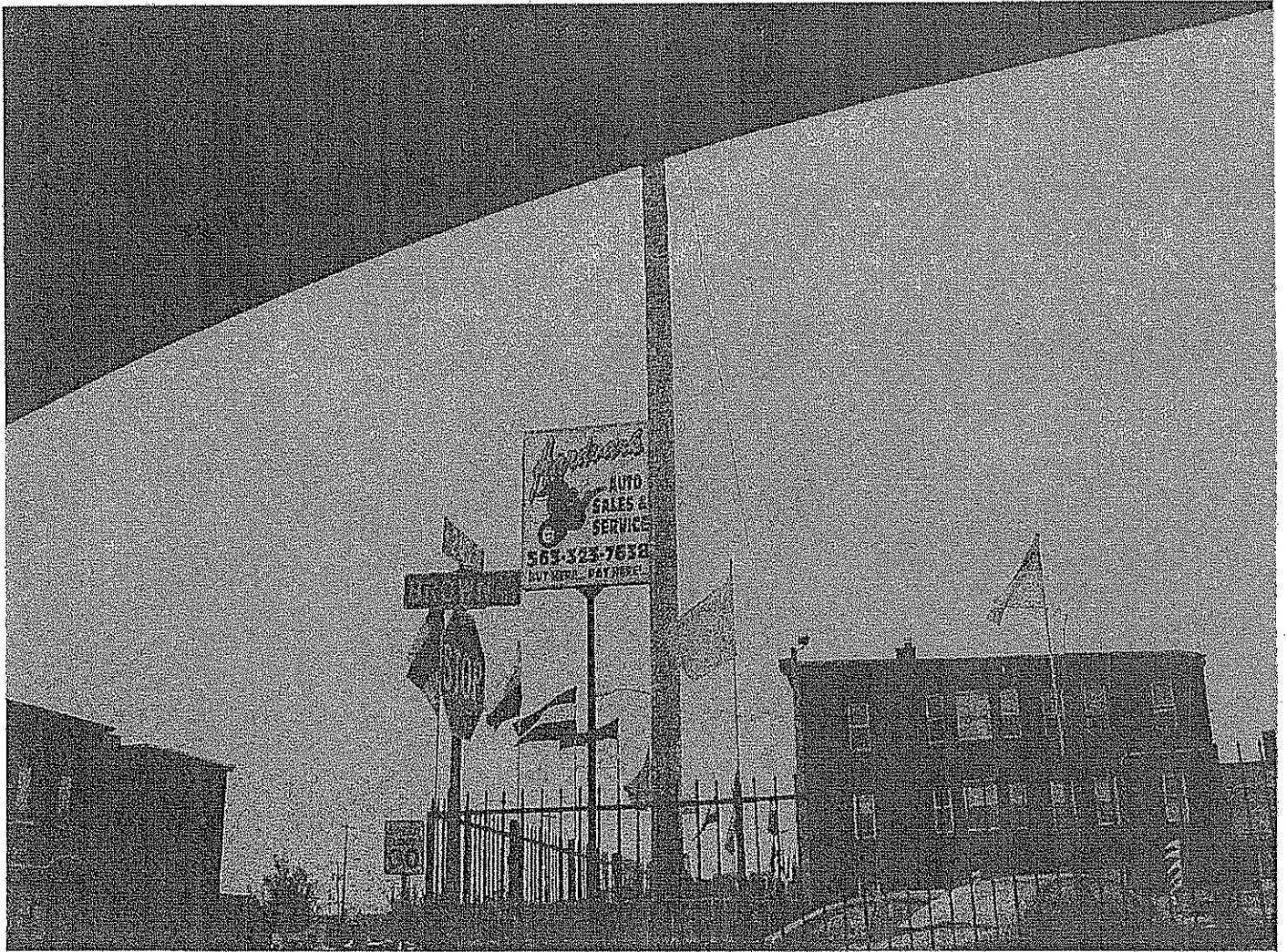
Subscribed and sworn to before me, a notary public in and for the State of Iowa, this 4
day of December, 2006.



Notary Public, State of Iowa
My commission expires: 8-28-09

**PLAINTIFF'S
EXHIBIT
H**

PRI215 112-0213



#1



#1A



#1 B



#1c

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

STATE OF IOWA, ex rel.
THOMAS J. MILLER,
ATTORNEY GENERAL OF IOWA,
and IOWA DEPARTMENT OF
TRANSPORTATION,

Plaintiffs,

v.

BRUCE RUBEN DUQUE, TINA R. DUQUE
(a/k/a Tina R. Heth), FRANCISCO J. DUQUE, JR.,
ESPERANZA DUQUE and JONATHAN WILLE,
individually and d/b/a AARDVARK AUTO
SERVICE & SALES, STATE STREET CAR
COMPANY, THE MOTORHAUS, AUTO KINGS,
UBA AUTO REPAIR and/or URA AUTO REPAIR
and THE CAR BOYS,

Defendants.

EQUITY NO. _____

**AFFIDAVIT OF
HOLLY MERZ**

I, Holly Merz, being duly sworn on oath, state as follows:

1. I am an Investigator in the Iowa Attorney General's Office, a position I have held since October 1988. I am currently assigned to work in the Consumer Protection Division. As one of my responsibilities in the Consumer Protection Division, I investigate various forms of deceptive or unfair practices relating to motor vehicle transactions or sales practices.

2. I have handled the investigation of Defendants.

3. I have reviewed the investigative files relating to the Defendants, including voluminous documents produced by various banks, finance companies, credit reporting agencies, insurance companies, auction houses, and advertising publications.

4. I have read the Petition to which this Affidavit is attached and the factual

**PLAINTIFF'S
EXHIBIT**

I

PR1215 112-0213

allegations it contains are accurate to the best of my knowledge.

Holly Merz
Holly Merz

Signed and sworn to by Holly Merz before the undersigned Notary Public in and for the State of Iowa on this 28th day of January, 2007.

Helen Alessio
Notary Public



Return of Service

In The Iowa District Court for Scott County

Case Name _____

(This is not an invoice - an advance deposit may have been sent)

Type of Service
Code

Case No. _____

Notice received this date **07/14/2006**

- ☒ Personal
☐ Dwelling/Substitute
☐ Hotel, Boarding/Rooming House
☐ Corporation/Association
☐ Official (State, County, City)
☐ Spouse away from Residence
☐ Other _____

1
 2
 3
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 5
 6
 7

STATE of IOWA)

Scott County)

I certify that I served a copy of:

- ☐ Petition and Original Notice
☐ Modification/Application and Notice
☐ Order to Show Cause

- ☐ Order Filed _____
☐ Writ _____
☒ Other Notice
☐ Subpoena _____

Served Person(s):

Type Code

FRANCISCO DUQUE

at

1147 FENNO DR, BETon **07/18/2006 14:40**

(name)

(address)

(date Time)

Notes:

Served Substitute:

_____ by serving _____

(name)

(name)

[]

at _____ on _____

(address)

(date Time)

, (a person residing therein who was then at least 18 years old

OR spouse away from residence). (strike non-applicable part.)

Notes:

Served Business:

_____ by serving _____

(Company/Government Unit Name)

(name)

[]

_____, on _____, at _____

(title)

(date time)

(address)

Notes:

Fees

Service ... \$ **15.00**
 Copies ... \$ **0.50**
 Mileage ... \$ **5.79**
 Total \$ **21.29**

Scott County Sheriff **Dennis Conard**

By **0030 - DEP. JACK RUDSELL**
 (Deputy Sheriff)

Note: Copy of Original Notice, if served, must be attached to this form.

**PLAINTIFF'S
EXHIBIT**
J

PR1215 112-0213

IN THE MATTER OF

MOTORHAUS AUTO SALES

Dealer #1253

Respondent.

CIVIL INVESTIGATIVE
DEMAND

RECEIVED

2014 APR 17

The State of Iowa by Thomas J. Miller, Attorney General of Iowa, and by Jessica Dvorak, Assistant Attorney General, pursuant to the provisions of Iowa Code § 714.16 (2006), commonly known as the Iowa Consumer Fraud Act, and Iowa Code Chapter 537, commonly known as the Iowa Consumer Credit Code, directs you to the following Civil Investigative Demand (hereinafter "CID").

In connection with this office's investigation, evidence has been obtained sufficient to make it appear that the business practices engaged in by Motorhaus Auto Sales (hereinafter "Motorhaus") are in violation of the Iowa Consumer Fraud Act. Since it appears to the Office of the Attorney General of Iowa that it would be in the public interest to further investigate your business practices, this CID is being served upon you pursuant to the provisions of the Iowa Consumer Fraud Act, specifically subsections 714.16(3)–(6), and the Iowa Consumer Credit Code.

More specifically, but without limitation, the Iowa Attorney General believes it to be in the public interest to further investigate whether certain merchandising and finance practices and activities relating to the marketing and financing of used vehicles are in violation of the Iowa Consumer Fraud Act and Iowa Consumer Credit Code, whether those potential violations are committed by Motorhaus entities or persons under its

control, or by third parties that coordinate with Motorhaus by marketing its products and/or by supplying it information.

To comply with this CID, you must file a written response, under oath, with this office no later than twenty-one (21) days after the date of service of this CID. The response must contain all of the information and documents requested.

Because it appears that consumers may be suffering ongoing harm as a result of Motorhaus's business practices, an extension of time will be granted only upon a legitimate showing of need, assurances that a good faith attempt will be made to answer the CID, and specifics as to which paragraphs of the CID require additional time to respond. Requests for extensions of time should be directed to Assistant Attorney General Jessica Dvorak at (515) 281-5926.

For this reason, any attorney who will represent Motorhaus in this matter should be promptly advised of the service of this CID.

DEFINITIONS

Advertisement means the attempt by publication, dissemination, solicitation, or circulation to induce directly or indirectly Any Person to enter into Any obligation or acquire Any title or interest in Any Merchandise.

All means Any and vice versa.

Any means each and every and one or more.

Communication means the transfer of Any information from one Person to another Person whether by document, oral, telephonic, electronic, or recorded means.

Consumer means Any Person who has purchased or may purchase a vehicle from Motorhaus.

Copy means either an original Document or a legible and complete photostatic copy, or, in the case of an audio or videotape, a clear copy of the tape requested.

Credit means the right granted by a Person extending credit to another Person to defer payment of debt, to incur debt and defer its payment, or to purchase property or services and defer payment thereof.

The phrase Describe in Detail means to supply a full description and narrative account of the allegation, fact, event, transaction, relationship, thing, or occurrence to which the inquiry is directed.

Document includes, without limitation except as noted herein, books, records, meeting agendas and minutes, correspondence, letters, telegrams, notices, memoranda, studies, notes, working papers, handwritings, typewritings, printings, photocopies, drawings, photographs, charts, tape recordings, video recordings, phone or voicemail recordings, email, computer diskettes, computer printouts, electronic media, other data computations, and every other means of recording upon any tangible thing, and any form of Communication, representation, or any mechanical or electronic data transmission. Each such Document shall include Any attachments and enclosures.

Employee includes Any person who is hired by another Person for a wage, salary, fee, or payment in exchange for personal services and who does not provide the services as part of an independent business. A Person would not provide services as part of an

independent business where the hiring entity retains the right to control the conduct of the Person's work, retains the Person on the entity's payroll (however informal), or provides the equipment for the Person to accomplish the work.

Identify (with respect to Persons) means to state, to the extent known, the Person's full name, present or last known business and residence addresses, present or last known telephone number, position with or relationship to you, and when referring to a natural person, the present or last known place of employment. Specific interrogatories may request additional information.

Merchandise includes Any object, wares, goods, commodities, intangibles, securities, bonds, debentures, stocks, real estate, or services.

Person includes Any natural person, corporation, corporate entity, partnership, association, joint venture, organization, government, governmental entity or trust, public authority, financial institution, educational institution, municipal corporation, and any other legal entity.

Regarding means in whole or in part constituting, containing, concerning, discussing, commenting upon, describing, analyzing, identifying, stating, pertaining to, referring to, forming the basis of, consisting of, evidencing, reflecting, supporting, contradicting, or in any way legally, logically, or factually connected with the subject matter or proposition discussed.

You and Your means Motorhaus, its merged, consolidated, or acquired predecessors, their divisions, units, subsidiaries whether or not wholly owned, and their

present and former officers, directors, agents, representatives, or employees.

INSTRUCTIONS

1. As noted, Your response to these requests is due within twenty-one (21) days of service of these requests. If You object to any request or portion of a request, identify the specific requests or portion of requests objected to and state with particularity the reasons for objection. If You object to a portion of a request, produce all information called for by that portion of the request to which You do not object.

2. Also as noted, You must file Your response under oath.

3. Unless otherwise stated, each request for information only concerns the period of time from January 1, 2003 to present. Accordingly, unless otherwise stated, You need not produce information that exclusively concerns the period of time existing before January 1, 2003. For each response, state the period of time that the responsive material concerns, whether that period is the entire time period stated above or a fraction thereof.

4. Any written or physical information provided must be clearly labeled and specifically identified by reference to the demand paragraph to which it is a response.

5. Each response to these requests shall be based on All knowledge and information (whether or not hearsay) in Your possession, custody, or control.

6. These requests apply to All Documents in Your possession, custody, or control, regardless of whether such Documents are held by You or Your representative(s)

or attorney(s).

7. If, in responding to any of the these requests, You encounter any ambiguity in construing either the request or a definition, an instruction, or a time period relevant to the request, proceed with the more expansive interpretation. For example, if the use of the words "and," "or," or "and/or" create Any doubt about the inclusiveness of a specific CID paragraph, adopt the meaning resulting in the provision of more, rather than less, information.

8. The use of a verb in Any tense shall be construed as the use of the verb in all other tenses, whenever necessary to bring within the scope of the specification all responses that might otherwise be construed to be outside the scope. The use of the singular form of any word includes the plural and vice versa.

9. If, in connection to any request, You contend that information otherwise subject to production is protected from disclosure by an applicable privilege or doctrine, Describe in Detail the subject matter of the information and the precise factual basis for Your claim of privilege.

10. These requests are continuing in nature and require further response if You discover or obtain additional responsive information after the time of Your initial response.

11. In each instance in which a Document is produced in response to a request, the current edition should be produced together with all earlier editions, or predecessor Documents serving the same function during the relevant time period, even though the

title of earlier Documents may differ from current versions.

12. If any Document responsive to this request was lost or has been removed, destroyed, or altered prior to the service of this subpoena, furnish the following information with respect to each Document:

- a. A description of the Document to the extent known, and the last time and location that the Document was known to be or believed to have existed;
- b. The date, sender, recipient and other Persons to whom copies were sent, subject matter, present location, and location of Any copies; and
- c. The Identity of Any Person authorizing or participating in any removal, destruction, or alteration, date of such removal, destruction or alteration, and the method and circumstances of such removal, destruction, or alteration.

13. If no Documents exists that are responsive to a particular request, You shall state so in writing.

REQUESTS FOR INFORMATION AND DOCUMENTS

1. Identify the Person(s) answering each request for information and Document(s) on behalf of Motorhaus.
2. Describe in Detail Motorhaus's policies and procedures on the destruction and/or retention of Documents. Identify the Person with the most complete knowledge of those retention/destruction policies.
3. State the full legal name, All business addresses (noting the principal office address), All telephone numbers, date of formation, place of formation, and form of business association for Motorhaus. State the same information for all other business associations that are (a) the parent organizations, subsidiaries, or affiliates of Motorhaus, and (b) owned or controlled by the same Persons who own or control Motorhaus.
4. Produce Copies of Motorhaus's corporate Documents, sufficient to show the information requested of Motorhaus in Question 3 above.
5. Identify All natural persons who are the present and former owners, officers, directors, and Employees of Motorhaus. For each person identified, state his or her position, dates of service in each position, and termination date.
6. For each year 2003, 2004, and 2005, produce Copies of (a) Motorhaus's annual reports, and (b) Motorhaus's annual (or monthly) profit and loss statements.
7. Produce Copies of All dealer licenses, license applications, bond information, and other Documents filed with or issued by Any state or local governmental entity that permit Motorhaus and/or its agents to legally buy or sell motor vehicles in

Iowa.

8. Produce Copies of All consumer credit notifications filed on behalf of Motorhaus pursuant to Iowa Code Sections 537.6201 – .6203.

9. Identify All financial institutions or other business associations (including floorplanners) with which Motorhaus has maintained a checking account, savings account, loan saving account, or line of credit. State the period of time during which Motorhaus maintained each account or line of credit. Identify the contact person for each business association identified.

10. Describe in Detail Motorhaus's policies and procedures Regarding the following aspects of Motorhaus's business:

- (a) The option for Any Consumer to "test drive" a vehicle before purchasing the vehicle from Motorhaus;
- (b) The option or need for Any Consumer to provide Motorhaus a deposit (i.e. a partial payment) before purchasing a vehicle from Motorhaus;
- (c) The methodology that Motorhaus has used to evaluate Any Consumer's credit risk by which Motorhaus assigned a grade score to the Consumer;
- (d) The option for Any Consumer to submit a payment to Motorhaus by personal check, including the assessment of fees for payment by personal check and for returned checks, and any check verification or guarantee services that Motorhaus has used.
- (e) The option for Any Consumer to obtain a warranty on a vehicle purchased from Motorhaus, including Any Motorhaus warranty program that Motorhaus has offered and/or third-party warranty

program that Motorhaus has Communicated to the Consumers.

- (f) The repossession of a vehicle that Any Consumer has purchased from Motorhaus, including:
 - (1) The circumstances under which Any Consumer has paid fees to Motorhaus Regarding the repossession;
 - (2) The set aside and return of Any Consumer's personal property that was present on or contained within the repossessed vehicle;
 - (3) The location(s) at which Motorhaus has stored Any vehicles after repossession;
 - (4) The disposal of Any repossessed vehicles, whether through auction, re-sale by Motorhaus, etc.;
 - (5) The collection of deficiency judgments against Any Consumer.
 - (g) The handling of Consumer disputes or complaints Regarding Motorhaus's practices;
 - (h) The Compliance with the Truth In Lending Act.
11. Produce All Documents that You have produced or disseminated for internal use (such as training documents) Regarding the same aspects of Motorhaus's business as that listed in Question 10 above.
12. Produce All Documents that You have posted on the Motorhaus premises Regarding the same aspects of Motorhaus's business as that listed in Question 10 above.
13. For each year 2003, 2004, and 2005, produce the following information:
- (a) The total number of vehicles acquired or purchased by Motorhaus;
 - (b) The total number of used vehicle sold by Motorhaus;

- (c) The total number of cash sales of used vehicles made by Motorhaus;
- (d) The total number of credit sales of used vehicles made by Motorhaus;
- (e) The total number of credit sales of used vehicles made by Motorhaus where financing was provided by Motorhaus;
- (f) The total number of credit sales of used vehicles made by Motorhaus where a financial institution other than Motorhaus provided the financing;
- (g) The total number of vehicles that Motorhaus sold that were covered by a dealer warranty;
- (h) The total number of vehicles repossessed by Motorhaus.

14. Identify the Person(s) (including wholesalers, auction houses, etc.) from whom Motorhaus has acquired or purchased vehicles that Motorhaus then has sold or planned to sell to Consumers. State the number of vehicles acquired or purchased from each source.

15. Produce Copies of All Advertisements accessible by Iowa Consumers and Regarding Motorhaus's vehicles or services. State the date or period during which each advertisement was run. Identify the publications, websites, radio stations, or television stations where each of the advertisements was placed.

16. Identify Any marketing consultant, advertising agency, market research firm, or other Person, including Employees of Yours, with whom You have consulted Regarding the advertising of Motorhaus's used vehicles or services.

17. Identify All financial institutions and other business associations with which Motorhaus has consulted, contracted, collaborated, or cooperated Regarding extensions

of Credit to Consumers, including, but not limited to, (a) those business to which Motorhaus has sent or submitted a consumer credit application, has assigned any retail installment contact and security agreement, or has reported the status of consumer credit accounts, and (b) those businesses that have provided or considered providing extensions of Credit to Consumers for the purchase of a vehicle from Motorhaus. For each business, Describe in Detail their relationship with Motorhaus.

18. For each year 2003, 2004, and 2005, state whether Motorhaus made more than twenty-five extensions of Credit to Consumers in the state of Iowa.

19. Produce Copies of All Documents that Any Consumer may have received and/or signed Regarding the Consumer's purchase of vehicle from Motorhaus or financing of a vehicle by Motorhaus. Describe in Detail the circumstances under which the Consumer would receive or sign each Document identified.

20. Produce Copies of All Documents that Any Consumer may receive and/or sign Regarding the Consumer's request for Motorhaus to repair or service a vehicle. Describe in Detail the circumstances under which the Consumer would receive or sign each Document identified.

21. Identify All Persons who have repossessed vehicles from Consumers on behalf of Motorhaus.

22. Produce Copies of All Document(s) that Any Consumer may receive and/or sign Regarding the repossession or resale of the Consumer's vehicle. Describe in Detail the circumstances under which the Consumer would receive or sign each Document

identified.

23. For the years 2003, 2004, 2005, and 2006, State the number of duplicate vehicle titles that Motorhaus has obtained from the Scott County Treasurer.

24. For Any civil suit in which You defended an allegation of fraud, misrepresentation, failure to disclose, a violation of Any "consumer protection" statute in the sale and/or finance of any motor vehicle, or a violation of Any repossession law, Describe in Detail the court of jurisdiction, the case number, the nature of the claim, the background facts, and the outcome of the case.

25. Identify All Consumers who have complained, either formally or informally, either orally or in writing, to You Regarding Motorhaus's practices. Describe in Detail the nature of the complaint, the background facts, and how the complaint was resolved.

26. For the years 2003, 2004, and 2005, produce a Copy of the income tax returns (such as Internal Revenue Service ("IRS") form 1120), including IRS form 2553, filed with the IRS and on behalf of Motorhaus. Identify Any Persons with whom You consulted to complete and file those returns.

27. Produce Copies of All Documents that Motorhaus must maintain for or file with any federal, state, or local government entity Regarding Any Employee of Motorhaus, including, but not limited to W-2 Forms, W-4 forms, 1099 forms, payroll records, employment contracts, earning records, social security record, unemployment insurance records, worker's compensation records, immigration records, employee benefit records, and other tax and labor records.

28. State the number of dealer license plates that Motorhaus has ordered from the Iowa Department of Transportation. State the number of those dealer license plates that Motorhaus lost or had stolen.

29. State the number of temporary license plates that Motorhaus has issued since January 1, 2003.

30. For the first and last motor vehicle sold by Motorhaus to a Consumer each month (from January 2003 to June 2006), produce the following information and Documents:

- (a) The Identity of the Consumer purchasing the vehicle;
- (b) The year, make, and vehicle identification number of the vehicle;
- (c) All Documents Regarding Your acquisition or purchase of the vehicle, including but not limited to:

- (1) All purchase agreements;
- (2) All auction receipts;
- (3) All damage disclosure statements;
- (4) All odometer statements;
- (5) All title documents (front and back);
- (6) All signed power of attorney forms;
- (7) All worksheets;
- (8) All Documents that You completed, or had completed on Your behalf, Regarding Any inspection of the vehicle(s);
- (9) All Advertisements, or other information from Any source Regarding the vehicle.

- (d) All repair or maintenance Documents (regardless of the owner);
- (e) All work orders;

- (f) All estimates of repair;
- (g) All warranty information;
- (h) All Carfax printouts, or other Documents Regarding the prior history of the vehicle;
- (i) All Documents Regarding the sale of the vehicle to the Consumer, including but not limited to:
 - (1) All advertisements;
 - (2) All title documents (front and back);
 - (3) All damage disclosure statements;
 - (4) All purchase/sales agreements or invoices;
 - (5) All finance papers (Truth-in-Lending disclosure documents);
 - (6) All signed Power of Attorney forms;
 - (7) All worksheets;
 - (8) A copy of the outside cover of the Consumer's file or deal jacket;
- (j) All Documents Regarding the repossession of the vehicle;
- (k) The Identity of Any Consumer who purchased the vehicle after repossession and the price that Consumer paid for the purchase.

31. For each Consumer listed on Attachment A, produce the same information and Documents that is asked for in Question 30 above.

OATH

I, _____ being first duly sworn, state under penalty of perjury that the answers submitted by me in response to the foregoing Demand for Information are true and complete to the best of my knowledge.

Dated this _____ day of _____, 2006.

Subscribed and sworn to before me this _____ day of

_____, 2006.

Notary Public

NOTICE OF INTENT TO PROCEED

Service of this Civil Investigative Demand and Notice of Intent to Proceed on you will constitute your only notice, pursuant to Section 714.16(6), that your failure to comply with this Civil Investigative Demand will result in a suit being filed against you for violations of the provisions of the Iowa Consumer Fraud Act.

Dated this 3rd day of July, 2006.

THOMAS J. MILLER
Attorney General of Iowa,

By: 

Jessica Dvorak
Assistant Attorney General
Consumer Protection Division
1305 East Walnut
Hoover Building, 2nd floor
Des Moines, IA 50319
Telephone: (515) 281-5926

ATTACHMENT A

Matthew Patrick McMillian

445 S. 7th Street

Eldridge, IA 52748

1996 Nissan Maxima GLE

VIN: JN1CA21D5TT133639

Michelle Morgan

6302 Appomattox RD

Davenport, IA 52806

Geozette Garth

1011 LeClaire St

Davenport, IA 52803

IN THE MATTER OF

AARDVARK AUTO SALES

Dealer #3274

Respondent.

)
) CIVIL INVESTIGATIVE
) DEMAND
)
)

The State of Iowa by Thomas J. Miller, Attorney General of Iowa, and by Jessica Dvorak, Assistant Attorney General, pursuant to the provisions of Iowa Code § 714.16 (2006), commonly known as the Iowa Consumer Fraud Act, and Iowa Code Chapter 537, commonly known as the Iowa Consumer Credit Code, directs you to the following Civil Investigative Demand (hereinafter "CID").

In connection with this office's investigation, evidence has been obtained -sufficient to make it appear that the business practices engaged in by Aardvark Auto Sales (hereinafter "Aardvark") are in violation of the Iowa Consumer Fraud Act. Since it appears to the Office of the Attorney General of Iowa that it would be in the public interest to further investigate your business practices, this CID is being served upon you pursuant to the provisions of the Iowa Consumer Fraud Act, specifically subsections 714.16(3)–(6), and the Iowa Consumer Credit Code.

More specifically, but without limitation, the Iowa Attorney General believes it to be in the public interest to further investigate whether certain merchandising and finance practices and activities relating to the marketing and financing of used vehicles are in violation of the Iowa Consumer Fraud Act and Iowa Consumer Credit Code, whether those potential violations are committed by Aardvark entities or persons under its

control, or by third parties that coordinate with Aardvark by marketing its products and/or by supplying it information.

To comply with this CID, you must file a written response, under oath, with this office no later than twenty-one (21) days after the date of service of this CID. The response must contain all of the information and documents requested.

Because it appears that consumers may be suffering ongoing harm as a result of Aardvark's business practices, an extension of time will be granted only upon a legitimate showing of need, assurances that a good faith attempt will be made to answer the CID, and specifics as to which paragraphs of the CID require additional time to respond. Requests for extensions of time should be directed to Assistant Attorney General Jessica Dvorak at (515) 281-5926.

For this reason, any attorney who will represent Aardvark in this matter should be promptly advised of the service of this CID.

DEFINITIONS

Advertisement means the attempt by publication, dissemination, solicitation, or circulation to induce directly or indirectly Any Person to enter into Any obligation or acquire Any title or interest in Any Merchandise.

All means Any and vice versa.

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Copy means either an original Document or a legible and complete photostatic copy, or, in the case of an audio or videotape, a clear copy of the tape requested.

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The phrase Describe in Detail means to supply a full description and narrative account of the allegation, fact, event, transaction, relationship, thing, or occurrence to which the inquiry is directed.

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Employee includes Any person who is hired by another Person for a wage, salary, fee, or payment in exchange for personal services and who does not provide the services as part of an independent business. A Person would not provide services as part of an

independent business where the hiring entity retains the right to control the conduct of the Person's work, retains the Person on the entity's payroll (however informal), or provides the equipment for the Person to accomplish the work.

Identify (with respect to Persons) means to state, to the extent known, the Person's full name, present or last known business and residence addresses, present or last known telephone number, position with or relationship to you, and when referring to a natural person, the present or last known place of employment. Specific interrogatories may request additional information.

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Person includes Any natural person, corporation, corporate entity, partnership, association, joint venture, organization, government, governmental entity or trust, public authority, financial institution, educational institution, municipal corporation, and any other legal entity.

Regarding means in whole or in part constituting, containing, concerning, discussing, commenting upon, describing, analyzing, identifying, stating, pertaining to, referring to, forming the basis of, consisting of, evidencing, reflecting, supporting, contradicting, or in any way legally, logically, or factually connected with the subject matter or proposition discussed.

You and Your means Aardvark, its merged, consolidated, or acquired predecessors, their divisions, units, subsidiaries whether or not wholly owned, and their

present and former officers, directors, agents, representatives, or employees.

INSTRUCTIONS

1. As noted, Your response to these requests is due within twenty-one (21) days of service of these requests. If You object to any request or portion of a request, identify the specific requests or portion of requests objected to and state with particularity the reasons for objection. If You object to a portion of a request, produce all information called for by that portion of the request to which You do not object.
2. Also as noted, You must file Your response under oath.
3. Unless otherwise stated, each request for information only concerns the period of time from January 1, 2003 to present. Accordingly, unless otherwise stated, You need not produce information that exclusively concerns the period of time existing before January 1, 2003. For each response, state the period of time that the responsive material concerns, whether that period is the entire time period stated above or a fraction thereof.
4. Any written or physical information provided must be clearly labeled and specifically identified by reference to the demand paragraph to which it is a response.
5. Each response to these requests shall be based on All knowledge and information (whether or not hearsay) in Your possession, custody, or control.
6. These requests apply to All Documents in Your possession, custody, or control (regardless of whether such Documents are held by You or Your

representative(s) or attorney(s)).

7. If, in responding to any of these requests, You encounter any ambiguity in construing either the request or a definition, an instruction, or a time period relevant to the request, proceed with the more expansive interpretation. For example, if the use of the words "and," "or," or "and/or" create Any doubt about the inclusiveness of a specific CID paragraph, adopt the meaning resulting in the provision of more, rather than less, information.

8. The use of a verb in Any tense shall be construed as the use of the verb in all other tenses, whenever necessary to bring within the scope of the specification all responses that might otherwise be construed to be outside the scope. The use of the singular form of any word includes the plural and vice versa.

9. If, in connection to any request, You contend that information otherwise subject to production is protected from disclosure by an applicable privilege or doctrine, Describe in Detail the subject matter of the information and the precise factual basis for Your claim of privilege.

10. These requests are continuing in nature and require further response if You discover or obtain additional responsive information after the time of Your initial response.

11. In each instance in which a Document is produced in response to a request, the current edition should be produced together with all earlier editions, or predecessor Documents serving the same function during the relevant time period, even though the

title of earlier Documents may differ from current versions.

12. If any Document responsive to this request was lost or has been removed, destroyed, or altered prior to the service of this subpoena, furnish the following information with respect to each Document:

- a. A description of the Document to the extent known, and the last time and location that the Document was known to be or believed to have existed;
- b. The date, sender, recipient and other Persons to whom copies were sent, subject matter, present location, and location of Any copies; and
- c. The Identity of Any Person authorizing or participating in any removal, destruction, or alteration, date of such removal, destruction or alteration, and the method and circumstances of such removal, destruction, or alteration.

13. If no Documents exists that are responsive to a particular request, You shall state so in writing.

REQUESTS FOR INFORMATION AND DOCUMENTS

1. Identify the Person(s) answering each request for information and Document(s) on behalf of Aardvark.
2. Describe in Detail Aardvark's policies and procedures on the destruction and/or retention of Documents. Identify the Person with the most complete knowledge of those retention/destruction policies.
3. State the full legal name, All business addresses (noting the principal office address), All telephone numbers, date of formation, place of formation, and form of business association for Aardvark. State the same information for all other business associations that are (a) the parent organizations, subsidiaries, or affiliates of Aardvark, and (b) owned or controlled by the same Persons who own or control Aardvark.
4. Produce Copies of Aardvark's corporate Documents, sufficient to show the information requested of Aardvark in Question 3 above.
5. Identify All natural persons who are the present and former owners, officers, directors, and Employees of Aardvark. For each person identified, state his or her position, dates of service in each position, and termination date.
6. For each year 2003, 2004, and 2005, produce Copies of (a) Aardvark's annual reports, and (b) Aardvark's annual (or monthly) profit and loss statements.
7. Produce Copies of All dealer licenses, license applications, bond information, and other Documents filed with or issued by Any state or local governmental entity that permit Aardvark and/or its agents to legally buy or sell motor vehicles in Iowa.

8. Produce Copies of All consumer credit notifications filed on behalf of Aardvark pursuant to Iowa Code Sections 537.6201 – .6203.

9. Identify All financial institutions or other business associations (including floorplanners) with which Aardvark has maintained a checking account, savings account, loan saving account, or line of credit. State the period of time during which Aardvark maintained each account or line of credit. Identify the contact person for each business association identified.

10. Describe in Detail Aardvark's policies and procedures Regarding the following aspects of Aardvark's business:

- (a) The option for Any Consumer to "test drive" a vehicle before purchasing the vehicle from Aardvark;
- (b) The option or need for Any Consumer to provide Aardvark a deposit (i.e. a partial payment) before purchasing a vehicle from Aardvark;
- (c) The methodology that Aardvark has used to evaluate Any Consumer's credit risk by which Aardvark assigned a grade score to the Consumer;
- (d) The option for Any Consumer to submit a payment to Aardvark by personal check, including the assessment of fees for payment by personal check and for returned checks, and any check verification or guarantee services that Aardvark has used;
- (e) The option for Any Consumer to obtain a warranty on a vehicle purchased from Aardvark, including Any Aardvark warranty program that Aardvark has offered and/or third-party warranty program that Aardvark has Communicated to the Consumers.
- (f) The repossession of a vehicle that Any Consumer has purchased from

Aardvark, including:

- (1) The circumstances under which Any Consumer has paid fees to Aardvark Regarding the repossession;
 - (2) The set aside and return of Any Consumer's personal property that was present on or contained within the repossessed vehicle;
 - (3) The location(s) at which Aardvark has stored Any vehicles after repossession;
 - (4) The disposal of Any repossessed vehicles, whether through auction, re-sale by Aardvark, etc.;
 - (5) The collection of deficiency judgments against Any Consumer.
 - (g) The handling of Consumer disputes or complaints Regarding Aardvark's practices;
 - (h) The Compliance with the Truth In Lending Act.
11. Produce All Documents that You have produced or disseminated for internal use (such as training documents) Regarding the same aspects of Aardvark's business as that listed in Question 10 above.
 12. Produce All Documents that You have posted on the Aardvark premises Regarding the same aspects of Aardvark's business as that listed in Question 10 above.
 13. For each year 2003, 2004, and 2005, produce the following information:
 - (a) The total number of vehicles acquired or purchased by Aardvark;
 - (b) The total number of used vehicle sold by Aardvark;
 - (c) The total number of cash sales of used vehicles made by Aardvark;
 - (d) The total number of credit sales of used vehicles made by Aardvark;

- (e) The total number of credit sales of used vehicles made by Aardvark where financing was provided by Aardvark;
- (f) The total number of credit sales of used vehicles made by Aardvark where a financial institution other than Aardvark provided the financing;
- (g) The total number of vehicles that Aardvark sold that were covered by a dealer warranty;
- (h) The total number of vehicles repossessed by Aardvark.

14. Identify the Person(s) (including wholesalers, auction houses, etc.) from whom Aardvark has acquired or purchased vehicles that Aardvark then has sold or planned to sell to Consumers. State the number of vehicles acquired or purchased from each source.

15. Produce Copies of All Advertisements accessible by Iowa Consumers and Regarding Aardvark's vehicles or services. State the date or period during which each advertisement was run. Identify the publications, websites, radio stations, or television stations where each of the advertisements was placed.

16. Identify Any marketing consultant, advertising agency, market research firm, or other Person, including Employees of Yours, with whom You have consulted Regarding the advertising of Aardvark's used vehicles or services.

17. Identify All financial institutions and other business associations with which Aardvark has consulted, contracted, collaborated, or cooperated Regarding extensions of Credit to Consumers, including, but not limited to, (a) those business to which Aardvark has sent or submitted a consumer credit application, has assigned any retail installment

contact and security agreement, or has reported the status of consumer credit accounts, and (b) those businesses that have provided or considered providing extensions of Credit to Consumers for the purchase of a vehicle from Aardvark. For each business, Describe in Detail their relationship with Aardvark.

18. For each year 2003, 2004, and 2005, state whether Aardvark made more than twenty-five extensions of Credit to Consumers in the state of Iowa.

19. Produce Copies of All Documents that Any Consumer may have received and/or signed Regarding the Consumer's purchase of vehicle from Aardvark or financing of a vehicle by Aardvark. Describe in Detail the circumstances under which the Consumer would receive or sign each Document identified.

20. Produce Copies of All Documents that Any Consumer may receive and/or sign Regarding the Consumer's request for Aardvark to repair or service a vehicle. Describe in Detail the circumstances under which the Consumer would receive or sign each Document identified.

21. Identify All Persons who have repossessed vehicles from Consumers on behalf of Aardvark.

22. Produce Copies of All Document(s) that Any Consumer may receive and/or sign Regarding the repossession or resale of the Consumer's vehicle. Describe in Detail the circumstances under which the Consumer would receive or sign each Document identified.

23. For the years 2003, 2004, 2005, and 2006, State the number of duplicate

vehicle titles that Aardvark has obtained from the Scott County Treasurer.

24. For Any civil suit in which You defended an allegation of fraud, misrepresentation, failure to disclose, a violation of Any "consumer protection" statute in the sale and/or finance of any motor vehicle, or a violation of Any repossession law, Describe in Detail the court of jurisdiction, the case number, the nature of the claim, the background facts, and the outcome of the case.

25. Identify All Consumers who have complained, either formally or informally, either orally or in writing, to You Regarding Aardvark's practices. Describe in Detail the nature of the complaint, the background facts, and how the complaint was resolved.

26. For the years 2003, 2004, and 2005, produce a Copy of the income tax returns (such as Internal Revenue Service ("IRS") form 1120), including IRS form 2553, filed with the IRS and on behalf of Aardvark. Identify Any Persons with whom You consulted to complete and file those returns.

27. Produce Copies of All Documents that Aardvark must maintain for or file with any federal, state, or local government entity Regarding Any Employee of Aardvark, including, but not limited to W-2 Forms, W-4 forms, 1099 forms, payroll records, employment contracts, earning records, social security record, unemployment insurance records, worker's compensation records, immigration records, employee benefit records, and other tax and labor records.

28. State the number of dealer license plates that Aardvark has ordered from the Iowa Department of Transportation. State the number of those dealer license plates

that Aardvark lost or had stolen.

29. State the number of temporary license plates that Aardvark has issued since January 1, 2003.

30. For the first and last motor vehicle sold by Aardvark to a Consumer each month (from January 2003 to June 2006), produce the following information and Documents:

- (a) The Identity of the Consumer purchasing the vehicle;
- (b) The year, make, and vehicle identification number of the vehicle;
- (c) All Documents Regarding Your acquisition or purchase of the vehicle, including but not limited to:
 - (1) All purchase agreements;
 - (2) All auction receipts;
 - (3) All damage disclosure statements;
 - (4) All odometer statements;
 - (5) All title documents (front and back);
 - (6) All signed power of attorney forms;
 - (7) All worksheets;
 - (8) All Documents that You completed, or had completed on Your behalf, Regarding Any inspection of the vehicle(s);
 - (9) All Advertisements, or other information from Any source Regarding the vehicle.
- (d) All repair or maintenance Documents (regardless of the owner);
- (e) All work orders;
- (f) All estimates of repair;
- (g) All warranty information;
- (h) All Carfax printouts, or other Documents Regarding the prior history of

the vehicle;

(i) All Documents Regarding the sale of the vehicle to the Consumer, including but not limited to:

- (1) All advertisements;
- (2) All title documents (front and back);
- (3) All damage disclosure statements;
- (4) All purchase/sales agreements or invoices;
- (5) All finance papers (Truth-in-Lending disclosure documents);
- (6) All signed Power of Attorney forms;
- (7) All worksheets;
- (8) A copy of the outside cover of the Consumer's file or deal jacket;

(j) All Documents Regarding the repossession of the vehicle;

(k) The Identity of Any Consumer who purchased the vehicle after repossession and the price that Consumer paid for the purchase.

31. For each Consumer listed on Attachment A, produce the same information and Documents that is asked for in Question 30 above.

OATH

I, _____ being first duly sworn, state under penalty of perjury that the answers submitted by me in response to the foregoing Demand for Information are true and complete to the best of my knowledge.

Dated this _____ day of _____, 2006.

Subscribed and sworn to before me this _____ day of

_____, 2006.

Notary Public

NOTICE OF INTENT TO PROCEED

Service of this Civil Investigative Demand and Notice of Intent to Proceed on you will constitute your only notice, pursuant to Section 714.16(6), that your failure to comply with this Civil Investigative Demand will result in a suit being filed against you for violations of the provisions of the Iowa Consumer Fraud Act.

Dated this 3rd day of July, 2006.

THOMAS J. MILLER
Attorney General of Iowa,

By: Jessica Dvorak
Jessica Dvorak
Assistant Attorney General
Consumer Protection Division
1305 East Walnut
Hoover Building, 2nd floor
Des Moines, IA 50319
Telephone: (515) 281-5926

ATTACHMENT A

Jean Simpson
915 14th Ave.
Moline, IL 61265

Reginald Thorton
1302 5th Ave.
East Moline, IL 61244

Daphane Washington
1990 Chevy Lumina
VIN: 2G1WL54T9L9293063

Kenyaha Jennings
901 Farnam St., Apt 2
Davenport, IA 52803
1990 Maxima
VIN: JN1HJ01P8LT408814

JACK E. DUSTHIMER P.C.

Attorney at Law
A Professional Corporation

1503 Brady Street
Davenport Iowa 52803-4655
(563) 323-8344

September 11, 2006

JESSICA DVORAK
ATTORNEY GENERAL'S OFFICE
1305 E WALNUT ST
DES MOINES IA 50319

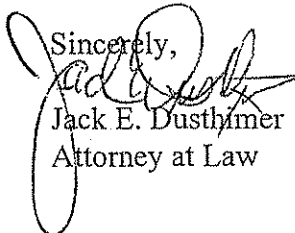
mailed and sent via FAX 515.281.6771

RE: Aardvark Auto & Motorhaus Auto

DEAR MS DVORAK:

I have had the pleasure of representing the above-referenced businesses in some, but not all, of their various ventures. In this regard Mr. Duque requested I review the papers previously delivered. I had previously received the documents, but between each of our calendars - we were unable to meet until this morning.

After meeting, and in that regard, I believe it is proper to comply with Iowa Code §714.16(4) and specifically, but not limited to (4)(c), and respectfully decline to provide any responses to your request. Any person who may be providing responses to these requests may be at risk of having their action, inaction, response, or statement mis-interpreted - to the extent someone may consider the response as being incriminatory in nature.

Sincerely,

Jack E. Dusthimer
Attorney at Law

cc:
client

PR1215 112-0213
**PLAINTIFF'S
EXHIBIT**

K

THOMAS J. MILLER
ATTORNEY GENERAL



CONSUMER PROTECTION DIVISION

Address Reply To:
HOOVER BLDG 1305 E. WALNUT
DES MOINES, IOWA 50319
TELEPHONE: 515-281-5926
TOLL FREE: 888-777-4590 (IN IOWA)
TELEFAX: 515-281-6771

Department of Justice

September 11, 2006

Jack E. Dusthimer, P.C.
Attorney at Law
1503 Brady St.
Davenport, IA 52803-4655

R.E. Aardvark Auto and Motorhaus Auto Subpoenas

Dear Mr. Dusthimer,

I am in receipt of your September 11 faxed letter. First, I must say I am disappointed in the delay. The Motorhaus CID was served on July 18, 2006 and the Aardvark CID was served on July 21, 2006. On July 27, 2006 I agreed to give Mr. Duque a thirty-day extension to answer both CIDs. At this time I also requested that if he had an attorney he let me know, I never heard back from Mr. Duque regarding either the hiring of an attorney or a desire not to respond to the CIDs. In granting the extensions, I believed it would be used to gather information in order fully respond to the CIDs, not for a complete non-response. As it stands now, responses are still due on September 18, 2006 for Motorhaus and September 19, 2006 for Aardvark.

It is my understanding from your letter that pursuant to Iowa Code Section 714.16(4)(c) you are trying to claim a blanket self-incrimination privilege for both Aardvark and Motorhaus. However, the U.S. Supreme Court has held that a corporation has no Fifth Amendment right against self-incrimination. *See Bellis v. United States*, 417 U.S. 85, 94 S.Ct. 2179 (1974). If you know of contravening law please inform me. If, despite a review of the law on corporate privilege, you still wish to claim a self-incrimination privilege for both Aardvark and Motorhaus please go through each subpoena and let me know on which questions you claim privilege. Please call me if you have any questions.

Sincerely,

A handwritten signature in cursive script, reading "Jessica J. Dvorak".

Jessica J. Dvorak
Assistant Attorney General
Deputy Administrator ICCC

PLAINTIFF'S
EXHIBIT

L

PRIS 112-0013

*** TX REPORT ***

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THOMAS J. MILLER
ATTORNEY GENERAL

CONSUMER PROTECTION DIVISION



Department of Justice

Address Reply To:
HOOVER BLDG 1303 E. WALNUT
DES MOINES, IOWA 50319
TELEPHONE: 515-281-5926
TOLL FREE: 888-777-4590 (IN IOWA)
TELEFAX: 515-281-6771

FAX TRANSMITTAL COVER SHEET

Fax Number: 515-281-6771

Pages transmitted: 2
(Including this page)

DATE: 9/11/06

Please deliver the following to:

NAME: Jack DusthimerFAX NO: 563-323-7452

This Fax is being sent by:

NAME: Jessica Dorak

Comments/Requests From Sender:

CONFIDENTIALITY NOTICE

JACK E. DUSTHIMER P.C.

Attorney at Law
A Professional Corporation

1503 Brady Street
Davenport Iowa 52803-4655
(563) 323-8344

September 13, 2006

JESSICA DVORAK
ATTORNEY GENERAL'S OFFICE
1305 E WALNUT ST
DES MOINES IA 50319

RECEIVED
06 SEP 15 AM 10:35
CONSUMER PROTECTION DIV.

RE: Aardvark Auto & Motorhaus Auto

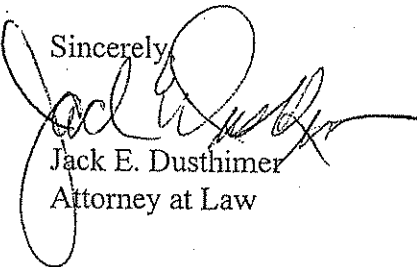
DEAR MS DVORAK:

As you may have otherwise experienced, not all business entities use counsel in the same fashion. For this, I regret Mr. Duque was unable to contact me in the fashion you now expected.

I don't know that I have any prevailing opinion on corporate Fifth Amendment rights, but the CID's requested seek specific identification of individuals who are responding to the various requests. Each statement is to be under oath. While any corporation may not, itself, have Fifth Amendment rights, I am also aware the Attorney General's office does seek enforcement as against individual employees of various businesses. See, for example, *State v. Fiberlite*, 476 N.W.2d 46 (Iowa 1991). As there is no assurance that enforcement would not include criminal charges, I must continue to recommend to my client, or any employee, not to answer any question which an answer may be interpreted as incriminatory. If there is no risk of any criminal charges, then you should not have any problems providing the immunity this code section offers.

We will continue to be cooperative, though we might continue to have disagreements of the various legal issues. That being said, I hope we can resolve the issue of Fifth Amendment rights, so we can provide some response by your September mandated deadlines.

Sincerely,



Jack E. Dusthimer
Attorney at Law

cc:
client

PLAINTIFF'S
EXHIBIT

M

PR125 115-0213

THOMAS J. MILLER
ATTORNEY GENERAL



CONSUMER PROTECTION DIVISION

Address Reply To:
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DES MOINES, IOWA 50319

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TOLL FREE: 888-777-4590 (IN IOWA)
TELEFAX: 515-281-6771

Department of Justice

September 18, 2006

Jack E. Dusthimer, P.C.
Attorney at Law
1503 Brady St.
Davenport, IA 52803-4655

Via Facsimile and Standard Mail

R.E. Aardvark Auto and Motorhaus Auto Subpoenas

Dear Mr. Dusthimer,

I am in receipt of your September 13 mailed letter, which I received on Monday as I was out of office when the letter arrived on Friday. As the deadlines for the two CIDs are this week and in the interest of good faith and not delaying this investigation even further I would ask you to either fax (515)-281-6771 or email (jdvorak@ag.state.ia.us) me correspondence as we try and resolve these issues.

As to the issue of privilege, I repeat what I said in my September 11 faxed letter, please let me know for which questions you believe your client needs to claim privilege. Certainly, there are a large number of questions wherein no individual privilege can or even needs to be claimed, for example, Request 2 asks for corporate records retention information, Request 3 inquires about corporate identity, Request 4 wants corporate documents related to Request 3, etc. Moreover, many of the requests involve corporate documents which speak for themselves and/or for the corporation and do not belong to any individual, nor does any corporate record custodian criminally implicate themselves merely by providing the corporation's documents. I further disagree with the legal arguments raised in your letter, but I will save that discussion for a later correspondence.

The responses for the CIDs are due today (9/18/06) for Motorhaus and tomorrow (9/19/06) for Aardvark. Given your correspondence I do not imagine a response is going to be forthcoming, however, I still believe a response as to which questions you are going to claim privilege on is appropriate. Please send me via email or facsimile such a response for both Motorhaus and Aardvark by September 19, 2006, which is the due date for the Aardvark

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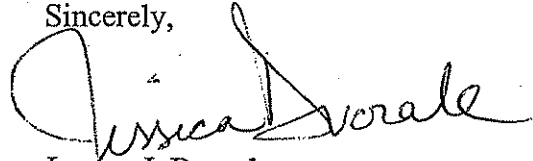
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PRIS 112013

Jack Dusthimer
September 18, 2006
Page 2

subpoena and one day beyond the due date for the Motorhaus subpoena. Once, I understand what your client's limited response will be we can discuss the due date for this limited production as well as continue toward resolving the legal issues. Feel free to also call me to discuss these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Jessica J. Dvorak". The signature is fluid and cursive, with a large initial "J" and "D".

Jessica J. Dvorak
Assistant Attorney General
Deputy Administrator ICCC

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 3117
CONNECTION TEL 915633237452
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RESULT OK

THOMAS J. MILLER
ATTORNEY GENERAL

CONSUMER PROTECTION DIVISION



Department of Justice

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TELEFAX: 515-281-6771

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Please deliver the following to:

NAME: Jack DuthimerFAX NO: (563) 323-7452

This Fax is being sent by:

NAME: Jessica Dorak

Comments/Requests From Sender:

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